

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
COLUMBUS DIVISION

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BROGDON ET AL., PLAINTIFFS : 4:23-CV-00088-CDL  
VS. : FEBRUARY 12, 2025  
FORD MOTOR COMPANY, DEFENDANT : COLUMBUS, GEORGIA

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TRANSCRIPT OF JURY TRIAL: VOLUME VIII OF X  
BEFORE THE HONORABLE CLAY D. LAND,  
UNITED STATES DISTRICT JUDGE

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17 INDEX

18	PLAINTIFFS' EXHIBIT 867A ADMITTED	10	7
	PLAINTIFFS' EXHIBIT 236 ADMITTED	73	12
19	DEFENSE EXHIBIT 551A ADMITTED	90	13
	DEFENSE EXHIBIT 237.1 ADMITTED	130	3
20	DEFENSE EXHIBIT 237.2 ADMITTED	131	6.
	DEFENSE EXHIBIT 214 ADMITTED	133	5
21	DEFENSE EXHIBIT 13 ADMITTED	139	10
	PLAINTIFFS' EXHIBIT 745 ADMITTED	164	23
22	DEFENSE EXHIBIT 313.32 ADMITTED	206	5
	DEFENSE EXHIBIT 313.44 ADMITTED	262	13
23	MOTION FOR JUDGMENT BY THE DEFENDANT	289	21
	THE COURT'S RULING	290	21
24	CERTIFICATE OF OFFICIAL REPORTER	312	1

25 Cross Examination By Mr. Lowrey .....11

8:34:00AM	1	Redirect Examination By Mr. Malek .....	85
	2	Recross Examination By Mr. Lowrey .....	99
	3	ROGER BURNETT	
	4	Direct Examination By Mr. Butler .....	110
	5	Cross Examination By Mr. Lowrey .....	149
	6	MARK SOCHOR	
	7	Direct Examination By Ms. Wright .....	168
	8	Cross Examination By Mr. Prather .....	231
	9	Redirect Examination By Ms. Wright .....	278
	10	Recross Examination By Mr. Prather .....	282
	11	JASON MILLS	
	12	Direct Examination By Mr. Butler .....	284
	13		
	14		
	15		
	16		
	17		
	18		
	19		
	20		
	21		
	22		
	23		
	24		
	25		

8:32:17AM 1 Wednesday, February 12, 2025 08:32:28

2 --- **PROCEEDINGS** ---

3 COURT SECURITY OFFICER: All rise. The United  
4 States District Court for the Middle District of Georgia,  
5 Columbus Division, is now in session.

6 THE COURT: Good morning, please be seated. I  
7 wanted to take up a couple of matters before the jury comes  
8 back. First of all, I think the cleanest way to handle the  
9 failure to warn claim, I am going to grant the Defendant's  
10 motion for judgment as a matter of law with regard to that  
11 claim based on a finding that there is a lack of evidence on  
12 proximate cause. So that case is no longer in the case and we  
13 don't need to worry about all of the formalities of how you  
14 would handle a motion to dismiss it voluntarily.

15 The second issue is Plaintiffs wanted to be heard on  
16 the alleged admission made yesterday in the Kao affirmative  
17 defense. Does somebody have that answer where I can see  
18 exactly what it says?

19 MR. BUTLER: Show it to him. I forget the exhibit  
20 number. 867.

21 THE COURT: I don't remember what affirmative  
22 defense it was, but it was back towards the back.

23 MR. BUTLER: I think it was 13th.

24 THE COURT: Refresh my recollection or memory as to  
25 how that is relevant.

8:50:20AM 1 MR. LOWREY: Sure, Your Honor. This is talking  
2 about a wreck that Ford displayed to the jury; it's a F150  
3 without much roof deformation but nevertheless a very serious  
4 injury. One of the things Mr. Herbst said about that in  
5 explaining why it's not typical of what we're dealing with  
6 here is that the vehicle had been modified.

7 Mr. Eikey took the stand for Ford and said, no, it  
8 hadn't been. This is a statement of Ford that it believes  
9 based on information that the vehicle had been altered or  
10 modified and that's what caused the injuries.

11 THE COURT: So your representation is that Eikey  
12 testified that it had not been modified.

13 MR. LOWREY: 100 percent.

14 THE COURT: And Eikey testified that the relevance  
15 of the Kao vehicle or at least the inference was that it had  
16 minor damage.

17 MR. LOWREY: Yes. That this somehow proves Ford's  
18 point that people can get hurt in rollovers.

19 THE COURT: Get hurt bad even when a roof doesn't  
20 collapse.

21 MR. LOWREY: I don't remember if he called out Brian  
22 by name on that, but he is clearly responding to Brian Herbst  
23 testimony on that point. It makes Brian's testimony somewhat  
24 more likely to be true. And it makes Mr. Eikey's testimony --

25 THE COURT: Mr. Malek, part of the objection was as

8:51:59AM 1 I recall that that witness didn't have personal knowledge of  
2 Ford's admission, which doesn't make the admission  
3 inadmissible, but why would this not be considered an  
4 admission by Ford?

5 MR. MALEK: Yes, Your Honor. On the witness issue  
6 although it may not make this in and of itself admissible, I  
7 think it's to the wrong witness because Mr. Eikey does not  
8 know what Ford's pleadings mean. He's not a lawyer and he's  
9 not involved in the legal process.

10 THE COURT: It was undisputed though that it was in  
11 the lawsuit involving the same vehicle that he testified to.

12 MR. MALEK: Correct. And unlike, for example, the  
13 request for admission which the Court allowed into evidence  
14 from the Hill matter. The Hill matter, of course, the  
15 Gwinnett County matter. This pleading is not an admission per  
16 se in that it's an affirmative defense which states if -- Ford  
17 is pleading in this matter, if the evidence so proves that the  
18 vehicle has been modified, Ford essentially reserves the right  
19 to assert this defense. And then Mr. Eikey says, this vehicle  
20 has not been modified in so far as the roof structure is  
21 concerned.

22 THE COURT: Well, it says that Ford believes that  
23 the damages alleged were caused by the alteration. The  
24 reasonable interpretation of that is that Ford is taking the  
25 position that it was altered.

8:53:32AM 1 MR. MALEK: There are many components of the  
2 vehicle, Your Honor, and this does not relate to the roof, per  
3 se; this relates to the entirety of the vehicle.

4 MR. LOWREY: But it relates directly to the  
5 proximate cause of the action; this is a tire swing.

6 THE COURT: I guess technically I could make the  
7 Plaintiffs tender this in rebuttal, but that seems foolish. I  
8 don't think you have to have a witness for an admission in  
9 judicio so it's just a matter of whether I -- To me it comes  
10 in as an admission now that I've clearly looked at it. You  
11 can argue what it means to the jury. It looks pretty clearly  
12 to me that at that time they were taking the position that  
13 this vehicle had been altered. So I do think it's an  
14 admission and I think because Eikey testified on that issue it  
15 should have probably come in while he was testifying so he can  
16 be questioned about it. Yes, sir.

17 MR. MALEK: Your Honor, this actually came in  
18 through Brian Herbst before Eikey was on the stand. And  
19 Mr. Herbst did not testify as to any specific modification or  
20 alteration of the roof when he was on the stand. So this has  
21 really skipped two witnesses before coming up now.

22 THE COURT: Did Herbst not testify as to whether the  
23 vehicle was altered?

24 MR. LOWREY: He did testify that the vehicle was  
25 altered. The step that Ford wants to skip is that in Ford's

8:55:19AM 1 view the injury was proximately caused by the modification.  
2 So to say that the injury was sustained even though the roof  
3 was fine is -- I don't want to say it's misleading -- but it's  
4 not an accurate conveyance of what Ford said. All it has got  
5 to do is make the facts somewhat more likely that Brian  
6 testified to. We are not trying to recall Mr. Eikey today to  
7 testify about it. Jim can work with this in closing.

8 THE COURT: I'm going to admit it. What number are  
9 you going to give to it? It needs to just show the caption of  
10 the case and I guess the defense.

11 MR. BUTLER: What number is it, 657?

12 THE COURT: Yes, sir, Mr. Malek.

13 MR. MALEK: Your Honor.

14 MR. BUTLER: Hold on one second and let me respond  
15 to the Judge. 867 and Judge you want just want the caption.

16 THE COURT: Plaintiffs 867, I just want it presented  
17 as it is without all the other stuff that's in the answer.  
18 The best way to do that I don't know. Mr. Malek.

19 MR. MALEK: I was going to suggest the opposite,  
20 Your Honor, in that this the 13<sup>th</sup> of 20 or more affirmative  
21 defenses; to put it in context it's fair. It's not some  
22 standalone affirmative defense. It's buried in the long list  
23 of various defenses.

24 THE COURT: You want the entire pleading in.

25 MR. MALEK: I think that puts it in a better.



8:56:50AM 1

THE COURT: The rest of it are not relevant.

2

MR. MALEK: But to put it in context for

3

completeness I think it belongs.

4

THE COURT: Well, I suppose we could put it in with

5

all the headings and just redact the language under all the

6

different defenses and then I can explain to the jury why

7

that's redacted; because that's irrelevant, if you want to do

8

that. Let's do that.

9

MR. LOWREY: Sure.

10

THE COURT: Let's just have the caption and all the

11

headings and the answer, but any of the narrative language

12

redact it all except with regard to this defense.

13

MR. BUTLER: What about after the 13<sup>th</sup> affirmative

14

defense? Redact it after that.

15

THE COURT: I think redact the narrative after that.

16

He wants to show that this was made with however many other

17

extra defenses there are.

18

MR. BUTLER: Just to be sure we do it right, you

19

want the caption, and I guess the opening paragraph, Ford's

20

answers to the complaint. And then you want general denial

21

and all of these bold capped.

22

THE COURT: I think what we need is we need the

23

caption and then we need the Defendant Ford Motor Company's

24

answers to the complaint. And then after that have all of the

25

headings, but all the narrative under all the headings will be

8:58:21AM 1 redacted except for the narrative with regard to this  
2 particular defense.

3 MR. BUTLER: Your Honor, we will prepare one either  
4 over lunch or this evening and share it with Ford to make sure  
5 we've done it correctly. Can we send it to Mr. Gunn also to  
6 make sure we've done it correctly?

7 THE COURT: Sure. That will be P867A, the redacted  
8 version, will be admitted. Go to the very end. Do we want  
9 the signatures of the attorneys or not?

10 MR. MALEK: Ford has no preference on that Your  
11 Honor, maybe so; it's part of the pleading.

12 MR. LOWREY: Yes, I think the signatures just to  
13 confirm it's --

14 THE COURT: So it will go all the way to the end and  
15 leave the signature line there for the attorneys. I don't  
16 think you need to put the service list. Redact the service  
17 list but leave on there the signature line to show that this  
18 is the attorneys that made this statement on behalf of Ford.

19 MR. MALEK: Thank you Your Honor.

20 THE COURT: Let's bring the jury down it's nine  
21 o'clock. Are they all here? Let's see if they are here. Was  
22 there an interrogatory answer that was submitted also or not.  
23 Was there an interrogatory answer that was admitted also as an  
24 admission or not?

25 MR. MALEK: There were requests for admission.

9:02:33AM 1

THE COURT: Yeah, I know that. Was there an  
2 interrogatory or not?

3 MR. LOWREY: There either was or will be an  
4 interrogatory about the payments to DRE.

5 THE COURT: That hasn't been tendered yet?

6 MR. LOWREY: Have I tendered that? We showed it to  
7 the jury so I am pretty sure we tendered it. We will clean  
8 that up. Somebody get me that.

9 MS. BAILEY: Absolutely.

10 MR. MALEK: Frank, we had those requests for  
11 admission; was that solved yet in terms of the redactions?

12 MR. LOWREY: The cleanup, yeah, you showed me your  
13 reductions, right? Someone showed me the redactions and they  
14 look great.

15 THE COURT: All right, we will figure it out.

16 [JURY ENTERS COURTROOM]

17 Okay, ladies and gentlemen welcome back. Thanks for  
18 being on time. We will continue with the cross-examination of  
19 Ms. Vogler. I remind you ma'am that you are still under oath  
20 from yesterday. Mr. Lowery, you may proceed.

21 MR. LOWREY: Thank you, Your Honor.

22 CROSS EXAMINATION

23 BY MR. LOWREY:

24 Q Good morning Dr. Vogler, how are you?

25 A Good morning. Good.

9:04:00AM 1 Q I'm fresher than I was yesterday. How about you?

2 A Yes.

3 Q Just to be sure we are all on the same page from where we

4 left off. I think yesterday we established that you are

5 a founder and a part owner of what we've been calling DRE

6 your company, is that correct?

7 A That's correct.

8 Q We established generally that the more money DRE makes

9 the more money you make; is that generally true?

10 A Again, it's a function of what we invest in for equipment

11 in a particular year.

12 Q The more profits after expenses that DRE makes, generally

13 speaking, the more money you make; yes?

14 A That would be correct.

15 Q We established you testified in 100 to 200 rollover

16 cases, correct?

17 A Yes.

18 Q Always for the automaker?

19 A Yes.

20 Q Always against the person was killed, paralyzed, or

21 injured; correct?

22 A That would be the plaintiff. So I am usually hired by

23 the defendant, yes.

24 Q You've testified over 100 times for Ford; we established

25 that?

9:05:00AM 1 A I think around that order, yes.

2 Q Never once in all of those cases have you ever testified

3 that an automaker's product was defective; that's also

4 true?

5 A That is correct.

6 Q We looked at a Ford interrogatory response together

7 indicating that Ford's Office of General Counsel had paid

8 your company \$23-million dollars and something from 1999

9 to 2012, correct? We saw that together.

10 A Yes.

11 Q For the work that DRE has performed for Ford from 2012 to

12 2025, all you can say is that it's at least a dollar; is

13 that also correct?

14 A I said I don't have to way to gather that number.

15 Q And you wouldn't commit to any number higher than one

16 dollar yesterday, correct?

17 A I would simply be guessing. I honestly don't know what

18 the firm has charged over those years.

19 Q Certainly since 2012, Ford has been a very important

20 client of DRE; correct?

21 A Our clients are the attorneys that hire us. I certainly

22 have had many cases over the years that have involved

23 Ford vehicles and other manufacturers, but our clients

24 are the attorneys.

25 Q But you're not telling the jury for example, that my

9:06:12AM 1 colleague Ms. Wright hired you for a case that you don't  
2 know that you're testifying for Ford; you are not saying  
3 that?

4 A I'm aware that she's representing Ford.

5 Q And that you are agoing to be testifying on behalf of  
6 Ford, right?

7 A If they ask me to come, yes.

8 Q You strike me as a fairly important person at DRE, is  
9 that fair?

10 A I think all the partners are important in deciding like  
11 what kind of equipment we're going to get or what we are  
12 going to be doing.

13 Q If you wanted someone at DRE to tell you what has Ford  
14 paid us since 2012 on matters, you could get that number  
15 couldn't you?

16 A No. We don't keep our cases by manufacture. Our clients  
17 are legal counsel if it's a lawsuit; that's our client  
18 who hires us.

19 Q So there's nothing in the case file, nothing in the entry  
20 that says Ford is the automaker; is that what you're  
21 telling us?

22 A That there's not a way to pull that from our system  
23 because that's not who hires us.

24 Q Let me ask you this. Isn't it true that you don't know  
25 the answer to that question because you don't want to

9:07:17AM 1 know the answer to that question so you can say you don't  
2 know when you are asked about it in cases like this;  
3 isn't that true?  
4 A No, that's not true.  
5 Q Let's talk about the truck and your inspection of the  
6 truck. Now, you inspected the truck only after it was  
7 righted; correct?  
8 A Correct.  
9 Q Judge Land appropriated righted as flipped back over onto  
10 its wheels; that's what we're talking about, right?  
11 A Yes. It was back onto its wheels and it had been moved  
12 to a storage facility.  
13 Q Got it. So you obviously didn't see it or inspect it  
14 while it was still lying on its roof at the crash site?  
15 A I did not.  
16 Q You took no instrument scans, or readings, or anything  
17 else of the truck while it was on its roof as the crash  
18 site; is that correct?  
19 A No. None of us were at the crash site. We've seen it at  
20 the storage location.  
21 Q Sometimes I ask questions I already know the answer to,  
22 but Judge Land doesn't let me answer them.  
23 Now, I want to be sure of one thing. You talked  
24 about damage caused when the tow truck righted the  
25 vehicle?

9:08:24AM 1

A Correct.

2 Q You're not blaming the Mills family or any of the Mills  
3 lawyers for the fact that the truck was damaged by the  
4 tow truck driver when he was turning it back over are  
5 you?

6 A No, I am not.

7 Q That's not our fault?

8 A That's correct.

9 Q The additional damage that you pointed out to the  
10 driver's side is basically if I am looking at the back of  
11 the truck and you're looking through the front  
12 windshield; it's basically that the driver side pillars  
13 folded in like that, inboard as you all say?

14 A It is.

15 Q And that occurred simply from the weight of the vehicle  
16 as the truck was being rolled over, correct?

17 A It's because the roof has already been compromised from  
18 this big hit with the ground and now when they usually  
19 attach to something on the underbody and pull the vehicle  
20 upright to get it back on its wheels. It's that process  
21 of shifting the weight of an already compromised vehicle  
22 back on to its wheel.

23 Q One of the things you said I want to be sure I  
24 understood. You basically made the point that the roof  
25 structure -- the headers, pillars, and the actual roof --



9:09:28AM 1

that's what connects the top of the two sides of the pillars that support the roof; correct?

2

3

A It's everything. Everything is integrated together so the pillars, the side headers, the front headers everything is attached together.

4

5

6

Q And in terms of horizontal stability, the roof is what connects the top point of the driver side A-Pillar to the top side of the passenger side A-Pillar; is that correct the header and the roof?

7

8

9

10

A Well, the roof is everything above the beltline, which is where the window of the glass stops; everything above that is the roof. So that's pillars, that's side rails, that's cross members that go from right to left and then there's the roof panel that's on the top; all of that is welded together to make the roof.

11

12

13

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15

16

Q One of the things you testified about that happened after the crash was the driver side window of the wheel said was broken out, correct?

17

18

19

A It was.

20

Q By a first responder, correct?

21

A It was.

22

Q Trying to get her out of the truck, correct?

23

A I'm not exactly certain who it was. There's a videotape from the dash cam of somebody taking something and repeatedly hitting the glass until they got it to break.

24

25

9:10:42AM 1 Q The jury has heard testimony about that. I don't mean  
2 anything technical by first responder. All I mean is  
3 that someone who is on the scene after the truck rolled,  
4 while they were trying to get Debra Mills out of the  
5 truck; correct?

6 A I think they were trying to assess what was happening in  
7 the truck and to do that they broke that window.

8 Q You don't think they were trying to save a life?

9 A I think they were certainly trying to get to the  
10 occupants of the truck.

11 Q I didn't hear you say anything yesterday about additional  
12 damage to the passenger side of the roof during the  
13 righting process, is that correct?

14 A I was talking about the driver side primarily, yes.

15 Q Not the passenger side where Mr. Herman Mills sat?

16 A That's correct.

17 Q Okay, let me ask you this. If we looked at the truck now  
18 sitting on its wheels and we looked at the passenger side  
19 roof, you would expect the roof to be higher than it was  
20 when the truck was upside down lying on the passenger  
21 side; correct?

22 A When the vehicle is upside down its carrying the weight  
23 of the vehicle. Usually, when you upright it you get  
24 some relaxation or some spring back of the roof structure  
25 because the weight is off. But when you have

9:11:59AM 1

deformation, the more deformation you have the less  
spring back you tend to get because of the way the  
structures have deformed.

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Q So, yes. If we look straight on at the photos of the  
truck wheel we looked at yesterday; that photo would make  
the roof look higher than it actually was when it was  
upside down and when Mr. Mills was in the truck. I  
understand everything you said before. Yes. That's  
correct?

A Yes. The roof when it was upside down was carrying the  
weight of the vehicle.

Q Plaintiffs' Exhibit 84, do you recognize this as the  
passenger side of the vehicle and that place where the  
door is pulled off; that is where Mr. Mills was sitting,  
correct?

A That's correct. We're looking at it from the passenger  
side and the door that's pulled down would be the front  
door.

Q Could you draw on this by the way? I think you can draw  
with color and the jury can see it. Can you draw where  
the windowsill, which is where the door stops and the  
window begins; is that an accurate term?

What do you call it in the industry?

A I'm sorry.

Q I call it the windowsill. The door comes up to here?

9:13:26AM 1

A Yes.

2 Q That's the windowsill?

3 A Yes.

4 Q The bottom part of the window and the top part of the  
5 door?

6 A Yes.

7 Q Can you trace where the windowsill is for the jury in  
8 this position?

9 A You can't see it because of what the way the door has  
10 been folded in.

11 Q The door is lying on the ground, yes?

12 A The bottom part of the doors has been pulled away from  
13 the vehicle.

14 Q The truck is not sitting on it; is it, the door?

15 A The bottom part of the door, no.

16 Q It's sitting on the ground, right?

17 A Yeah, it's on the ground.

18 Q Wherever that windowsill line is, is where the ground  
19 line is; right?

20 A No, not necessarily.

21 Q Are you telling us that somewhere right around here that  
22 the windowsill line is not somewhere right around there?

23 A We just can't see because that door has been pulled out  
24 towards us so we can't see exactly what the ground level  
25 is. That's why you can't establish with these

9:14:30AM 1

photographs where exactly that side of the roof is.

2

There is just not enough clarity because of the tall

3

grass to know where that door seal is.

4

Q It's not sitting on the grass, right? It's sitting on

5

the ground.

6

A The vehicle is on the ground, correct.

7

Q It can't be far off can it? We can all see this.

8

A I understand you're trying to draw conclusions from this

9

one photograph, but I know from looking at photographs it

10

depends on what angle they are taken. And to really

11

establish where something was you need different views of

12

it. And we don't have that for this particular side of

13

the vehicle. I can't answer exactly question to say

14

exactly what that is.

15

Q How about Plaintiffs' Exhibit 537A, I think this was

16

admitted. Let's pop that up there for the jury. Can we

17

get the page of Mr. Herbst's report that reproduces the

18

photo of Brian sitting in the front of the truck for

19

completeness? Defendant's 582 February 15th, 2024

20

report. Take us to page 17. Keep going. Keep going.

21

You saw this Mr. Herbst report, correct Dr. Vogler?

22

A Yes, I did.

23

Q You're not disputing that's what the truck looked like

24

when it was sitting on the tires?

25

A I believe that this is his scan of the vehicle when it was

9:17:41AM 1           uprighted at the storage facility.

2       Q     You did point out any errors in the scan of the photo

3           during your testimony or in your report?

4       A     No. I don't think that our measurements were that

5           different as it exists today.

6       Q     You also didn't criticize yesterday or in your report

7           these measurements that he's done compared to the roof of

8           an intact F250, correct?

9       A     I haven't gone back to specifically compare them, but I

10          am aware it's a scan of what the vehicle looks like

11          today.

12       Q     If this were to be a photo of the left side of the

13          passenger side, we're looking straight at the windshield;

14          correct?

15       A     Correct.

16       Q     You see the left side passenger side top of the roof is

17          deformed?

18       A     Yes.

19       Q     And based on your testimony, and I'm not asking you to

20          quantify it -- Based on your testimony that red line on

21          the left and the top line part of the roof on the left,

22          those would be lower while it was on the ground; correct?

23       A     Yes, it would under the weight of the vehicle.

24       Q     Put up 537A, this is the one we're looking at here, page

25          43; do you recognize this photo?

9:19:19AM 1 A No, I don't.

2 Q You've never see this Mr. Herbst report?

3 A I don't recall seeing it Mr. Herbst report.

4 Q I'm going to ask you to take on faith that that's Brian  
5 Buchner, the accident reconstructionist who testified  
6 last week. He is sitting where Mr. Mills would have been  
7 sitting, correct?

8 A I don't know. I haven't seen this photograph.

9 Q So you can't tell looking at the front of the vehicle?

10 A It looks like we're looking at the front of the vehicle,  
11 yes.

12 Q He's facing forward instead of backwards, right?

13 A Yes, I see his face.

14 Q And so that roof line, I am going to trace it so I don't  
15 run into another problem. This right here this is what  
16 you're saying would have been even lower -- I know you  
17 can't quantify it -- but even lower than the truck was  
18 lying on the ground with Mr. Mills inside of it; correct?

19 A Yes. It would have had some additional displacement  
20 because of the weight.

21 Q Got it. Let's take that down. As part of your work in  
22 this case, you reviewed the depositions of the scene  
23 witnesses, correct?

24 A Yes, I have.

25 Q Are you aware there was a scene witness who testified

9:20:30AM 1 multiple times that the roof was four to 6 inches above  
2 the console?  
3 A I don't recall the specifics of that testimony.  
4 Q You don't recall Mr. Colby Swicord saying that in his  
5 deposition?  
6 A Not specifically, no.  
7 Q And you weren't here to hear what he had to say earlier  
8 this week in court?  
9 A I was not.  
10 Q You're not claiming Mr. Swicord mistook the top of the  
11 roof for the sun visor are you when he was right there?  
12 A Could you repeat that?  
13 Q You're not saying Mr. Swicord mistook the top of the roof  
14 when he was in the vehicle for the sun visor are you?  
15 A I don't know what he said about it so I can't really say  
16 that he was mistaken.  
17 Q Fair enough. What about Anthony Harrison, another scene  
18 witness; did you study his testimony and deposition?  
19 A I don't recall the specifics of his testimony, no.  
20 Q Do you recall anything about him saying that when he  
21 looked in the driver-side at Ms. Mills, he couldn't even  
22 see across to see that Mr. Mills as also in the truck; do  
23 you recall that?  
24 A I don't recall the specifics of what they testified to.  
25 Q You did not take that fact into account when developing



9:21:52AM 1

your opinions; is that fair?

2

A I just don't recall specifically what they said.

3

Q Do you recall that he placed a second 911 call two and a half minutes after finding Ms. Mills, saying, oh wait there's another passenger. Do you recall that testimony or evidence?

7

A A reference to that, but not the timing. I don't call that. That would have been outside of my area.

9

Q There were several state troopers on the scene, correct?

10

A I believe there were, yes.

11

Q And they testified, the jury will recall, they testified about the position of the roof while the truck was still upside down; do you know that much?

14

A Again, I know they were asked about it. I just don't recall the specifics of what they said.

16

Q So you certainly are not in here to contradict those scene witnesses about what they saw?

18

A That's correct.

19

Q You've reviewed the scene witnesses' testimony in part because they were there while the truck was upside down and you were not; is that fair?

22

A I want to review their testimony so I have all the information that's available about what transpired. When I look at what the damage is to the roof I look at it as an engineer as to what the vehicle tells me where things

25

9:23:14AM 1 are deformed when I offered my opinions on the damage.

2 Q After it's turned over?

3 A In this case that's correct.

4 Q And to the best of your knowledge, not all of the scene

5 witnesses that were obtained by Ford or the Plaintiffs

6 they have what we say in Georgia, no dog in the fight; is

7 that consistent with your understanding?

8 A I don't know.

9 Q Do they say that in Michigan?

10 A Dog in the fight. I've heard that before, yes.

11 Q You don't know that, correct?

12 A I don't know who has been hired by whom.

13 Q Fair enough. We talked about this earlier. There is one

14 roof comprising multiple components, is that fair?

15 A I would describe it as there are multiple components that

16 are assembled together to make the roof.

17 Q To make one roof?

18 A Correct.

19 Q Among other things, the passenger side, looking through

20 the back of the truck and you're looking through the

21 front. The passenger side and the driver-side, these are

22 the side pillars; are you following me?

23 A Yes.

24 Q And the thing that goes across the top is the roof

25 consisting of the roof bows, the header, and whatever

9:24:31AM 1 piece of metal it is that goes on top of all of that; is  
2 that fair?

3 A Yes.

4 Q I'm just going to call that the roof. If you don't  
5 follow my questions you let me know, but that top part,  
6 the flat part that keeps out the rain is what I'm talking  
7 about.

8 If the roof doesn't stay flat and compress  
9 immediately, right? It did say it's a rigid piece of  
10 metal. I understand it can fold up, and fold down, and  
11 bend but it doesn't compress and stay perfectly flat;  
12 correct?

13 A I'm not following your question.

14 Q Sure. Here' what I'm calling the roof. Now, where my  
15 fingers are those are the anchor points between the roof  
16 and let's say the A-Pillar; are you with me so far?

17 A Yes, other than that definition is not what the roof is  
18 so I --

19 Q What do you call the flat part that's on the top?

20 A That's the top of the roof structure.

21 Q Let's use your term. The top of the roof structure and  
22 my fingertips were to connect the A-Pillar, which is the  
23 forward pillar, and then you look at the side of the  
24 windshield; are you with me so far?

25 A Yes.

9:25:58AM 1 Q If these two points the driver side A-Pillar and the  
2 passenger side pill, the roof can do that; correct?  
3 A Yes.  
4 Q It could do that, correct?  
5 A Yes.  
6 Q And the one thing it isn't going to do is stay perfectly  
7 flat and compress into itself; that's not going to happen  
8 is it?  
9 A It depends on how the forces come into the roof because I  
10 have seen some crashed vehicles where it will fold up on  
11 to itself.  
12 Q Fair. But that's not what you saw on this crash?  
13 A That's why we have that folding that happens when the  
14 vehicle uprighted and there it is kind of folded toward  
15 itself.  
16 Q I'm certainly not going to argue that there's folding in  
17 the roof, but the roof didn't stay perfectly flat because  
18 it's shorter somehow?  
19 A That is correct.  
20 Q I am not a Ph.D. engineer. I'm a history major in  
21 school. So let me try my hand at drawing on this. I  
22 want you to be able to see it and the jury. Not to  
23 scale. I'm calling these the A-Pillars. Looking at the  
24 front of the truck, P for passenger and D for driver. Do  
25 you understand that?

9:27:32AM 1 A Yes.

2 Q The roof, the top of the roof is what connects those two;

3 correct?

4 A Yes.

5 Q At this point and this point gets closer somehow, whether

6 it's this one moving in or that one moving in, or they

7 are both moving in; that's got to move right, or buckle,

8 or fold?

9 A It has two displace, but the pillar doesn't just move

10 inboard. Because it pinned that pillar runs all the way

11 down the floor to the floor in an arch. So it's not just

12 simply that it moves inboard.

13 Q It does like that?

14 A Exactly.

15 Q That is still shorter than this point?

16 A It depends. Because it is an arch you can have those

17 things remain the same, but because it's going down;

18 that's what's shortening it.

19 Q The roof would have to be the same length but it would to

20 like that?

21 A Exactly.

22 Q Something like what we saw at that front facing picture

23 after the truck was righted, do you recall that? Where

24 Mr. Buchner was sitting in it and there was another one

25 with Mr. Herbst measurements at the front of the

9:28:51AM 1

windshield?

2 A Yes, I remember those two.

3 Q This is not to scale. You and I may quarrel with how  
4 things happen, but if the passenger side does something  
5 like that with the A-Pillar, now, the roof is connected  
6 there. Let's just assume the driver side A-Pillar stays  
7 the same; that roof has got to either do that or that  
8 that, is that fair?

9 A No, because of what I just said. Because it's on a  
10 pinned arch so as that left side comes inboard it doesn't  
11 necessarily mean that you're going to get an upward or a  
12 downward. In fact, because it is an entire structure, it  
13 displaces the other side outboard. So it transmits  
14 forces, whatever forces, can make something move inboard  
15 is trying to push those forces into other areas of the  
16 roof and displace those outboard.

17 Q But that didn't happen in this crash. The A-Pillar was  
18 not displaced.

19 A It does look like there are some more erect areas on the  
20 driver side of the vehicle.

21 Q Let's suppose in this case that those are, in fact, a  
22 shorter distance; are you with me so far?

23 A Yes.

24 Q If that's true, the distance between these two points  
25 compresses; it's either going to do this or it's going to

9:30:29AM 1

do that, correct?

2

A It all depends on geometry so --

3

Q Tell me how to draw the line where it does something

4

other than that?

5

A First of all, you have to it to scale. Then you have to

6

take into consideration where things are joined and how

7

they will restrict motion. So you can't just simply

8

sketch it not to scale and say it's going to do this, or

9

it's going to do that. It's geometry. You have to look

10

at where those things are; where they are held; where

11

they are constrained when you try to say what is it going

12

to do if you move it in one direction or the other.

13

Q That's not what happened, correct? It should be moving

14

and the A-Pillar on the driver-side should stay erect,

15

correct?

16

A It appears that they have got some outboard displacement

17

to them.

18

Q Take my word for it. If this point from A to B is

19

shorter than the normal width of the roof. I'm not

20

asking you to validate it. Understand my assumption.

21

The jury is going to be able to look at these photos and

22

measurements. If this distance is shorter than this

23

distance, one thing the roof could do is that?

24

A You could have to tenting up, yes.

25

Q You could do that, correct?

9:31:50AM 1 A You could have recesses, yes.

2 Q And if it hit the ground -- Let's suppose the ground is

3 there, it's more likely to do that than that, right?

4 A It depends completely on how the forces are going into

5 the structure.

6 Q It might push it.

7 A You will certainly have the constraints of the ground

8 whatever surface you are on.

9 Q That's one of the things that can happen. Again, my

10 assumption is these points are closer than the ordinary

11 for roof top. Is there another path you want me to draw

12 there?

13 A Yes, again, as I talked about. You can have things move

14 relative to each other.

15 Q It could go like that?

16 A Absolutely.

17 Q No one has seen this sideways view?

18 A Today after it has been uprighted the driver side of the

19 roof has a very prominent recessed area from that side.

20 Q This would be two buckle points, correct?

21 A Well, they are not -- Those would be two points where

22 bends are occurring.

23 Q And this would be one, right?

24 A Yes.

25 Q Going to put this up here so that we can remember what



9:33:41AM 1           you and I talked about. Could you put back up the Herbst  
2           report we looked at together; it should be in Plaintiffs'  
3           Exhibit 582?

4                   MR. MALEK: Defense Exhibit 302.

5 BY MR. LOWREY:

6 Q     Apparently, both sides put this photo into evidence. We  
7     looked at this before, right? This is after the truck  
8     was righted. And you had no problems with the  
9     photograph, no problems with the measurements. You can't  
10    verify that they are precise, but not problems with those  
11    that you testified about; correct?

12 A    I want to be clear. This isn't a photograph. This is  
13    the 3D scan model of the subject vehicle.

14 Q    Okay, with that qualification, you've got no problem with  
15    what's depicted here as the truck; is that right?

16 A    It appears to be Mr. Herbst scan of the vehicle. That's  
17    correct.

18 Q    You know how this works. If there was something wrong  
19    with that, you would have for sure point it out to Ford's  
20    lawyers; right?

21 A    I think the point was both of Mr. Herbst's scenarios;  
22    this does not reflect how the vehicle was at rest.

23 Q    There's no dispute about that. He acknowledged that.  
24    You acknowledge that. Everybody acknowledges that. Fair  
25    enough. This is what the truck looked like after it was

9:36:08AM 1

up. Do you see the point that's labeled 21? There's a  
21 yellow line that comes right here; do you see that?

3 A Yes.

4 Q And then the same thing right here 0.13, right? Because  
5 those points got closer, the roof had to give and it gave  
6 by buckling downwards in a V; correct? I understand you  
7 to say some of this is tow truck damage. I'm not arguing  
8 with that. But that illustrates what you were talking  
9 about that the roof responds to the A-Pillar's connection  
10 points getting closer, correct?

11 A Yeah. It's actually a sideways force coming into that  
12 driver-side pillars that are forcing that inboard and  
13 causing that recess.

14 Q And that's part of the downward motion, the attachment  
15 point of the A-Pillar. They get closer right here; you  
16 are not disputing that?

17 A Yes.

18 Q And the roof has to give, correct?

19 A The roof displaces, yes.

20 Q I understand you're saying that only appeared as a result  
21 of towing damage, right?

22 A That's correct.

23 Q To back up the towing damage essentially we would have to  
24 get rid Line 21 and we'd have to move 21 back to the  
25 green line; that's where you are saying it more or less

9:37:37AM 1

was?

2 A It actually looks like it has been displaced outboard  
3 when it's at rest. When you look at the pictures of the  
4 vehicle.

5 Q We all say -- again -- I know you don't know how much.  
6 We all say that would have gone down, right? While it's  
7 on the ground in the crash -- down and in?

8 A Well, first of all, you're not identifying the top of the  
9 A-Pillar of the passenger side that's 0.11.

10 Q So this is the top of the A-Pillar right here?

11 A Yes. You can see where Mr. Herbst has drawn a line from  
12 the top to where it was on the corner of the windshield  
13 down to where it is so the roof is not between the  
14 pillars; it's between 0.11 and 0.21. Those are the two  
15 tops of the roof. So the roof goes up, over the  
16 passenger side, and then it goes down over the  
17 driver-side as we look at it now.

18 Q I'm going to move on unless there's anything you wanted  
19 to say?

20 A I'm here to answer your questions.

21 Q Now, if I could somehow send you back in time so that  
22 you, yourself, would be on the crash site looking at the  
23 truck upside down; would you want that opportunity to  
24 look with your own eyes directly into the driver side to  
25 see where the roof is? Wouldn't that be important

9:39:33AM 1 information you can bring to this jury?

2 A It's always good to have more information. So, yes, it

3 would have been nice to have better photographs. We

4 always look at what the police take. Their focuses on

5 helping the people, but it would be nice to get more

6 photographs.

7 Q The police are not photographing the structural details.

8 They are focused mostly on people, is that fair?

9 A I think that's correct.

10 Q Until we got the tow truck drivers photos we were all

11 working from police photos, right?

12 A Yes. That's correct and the videos.

13 Q Let's move back in time to 2015. You may recall that

14 Mills were in a model year 2015 F250, correct?

15 A That is correct.

16 Q But they had bought it in late 2014 because that's how

17 auto dealer work, correct?

18 A Yes. I think the vehicle was made the fall of the

19 previous year.

20 Q Probably made the fall of 2014 and purchased by the Mills

21 in October/November 2014, not too precise, but something

22 like that?

23 A I don't recall exactly when they purchased it.

24 Q Fair enough. So now I want to talk about the next

25 calendar year after the Mills bought their truck. And in

9:41:07AM 1

that calendar year Ford paid Autoliv, which is a  
components manufacturer; correct?

2

3

A Autoliv is another company, yes. I think that they work  
on airbags.

4

5

Q And other things too, correct?

6

A I don't know. I'm not that familiar with the firm.

7

Q Ford paid Autoliv to conduct some additional testing in  
20125 of the super duty trucks?

8

9

A I have seen testing on super duty trucks, yes.

10

Q Show me Plaintiffs' Exhibit 583.1, which I believe has  
been admitted. These are photos from Mr. Herbst report  
page 7. Are you familiar with this; it was in Mr. Herbst  
report, maybe you've seen these photos; correct?

11

12

13

14

A I've seen these materials over the years. Yes.

15

Q The top photo is what happened in 2015 when Autoliv  
conducted a test of a vehicle that's the equivalent of  
Mills' vehicle; is that correct?

16

17

18

A I think this is one of the tests that Autoliv conducted,  
yes.

19

20

Q But this was equivalent to the Mills' vehicle, right?

21

A I think it's a 2011 model year so, yes, that would be  
equivalent.

22

23

Q Then the photo in the middles is another test of a  
vehicle that's also equivalent to the roof on the Mills'  
vehicle; do you see that?

24

25

9:43:08AM 1 A Yes.

2 Q At the bottom photo is what happened when Ford tested

3 what was to become a 2017 model year super duty, correct?

4 A Yes.

5 Q So that is not the roof that the Mills had on their

6 truck; is that correct?

7 A That's correct.

8 Q Can you make that bottom photo large? That does not look

9 -- Let's assume it's lying on the ground like that.

10 A Lying on the ground. Do you mean sitting on the ground?

11 Q That's not a roof -- looking at that roof -- that's not a

12 roof where you would expect someone to be suffocated by

13 the roof of the vehicle coming down on them is it?

14 A Well, first of all whether someone is affected by the

15 roof depends on their position within the roof.

16 Q Generally speaking, the roof staying pretty close to

17 where it was built. That's not going to cause a

18 passenger to bend double and suffocated by their own

19 vehicle, correct?

20 A That's completely outside my area; that's a bio area.

21 Q Commonsense, you are smart, commonsense. If the roof is

22 up above your head it's unlikely to be pressing down on

23 you causing you to suffocate; fair?

24 A If you're not in contact with that; that would be

25 correct.

9:44:41AM 1 Q Take us back to the middle photo. By contrast if someone  
2 is in that couldn't you easily see that crushing them  
3 down, bending them in half, causing them to suffocate in  
4 their own vehicle?

5 A That's completely out of my area. I don't know how  
6 someone could be positioned in there.

7 Q Let's bring it up for a second. Let's assume you're just  
8 --[indecipherable]-- who rides around in vehicles; are  
9 you with me so far?

10 A Yes.

11 Q Okay. Between those two photos I showed you, are you  
12 saying that you would have no preference if you were in a  
13 rollover crash -- no preference -- between being in the  
14 one you are looking at now and going to show you again at  
15 the bottom?

16 MR. MALEK: Objection, Your Honor, asked and  
17 answered. Dr. Vogler already said out of the area. Asked and  
18 answered.

19 MR. LOWREY: This is well within the common  
20 experience Your Honor.

21 MR. MALEK: This is a biomechanical dummy; is not a  
22 common opinion.

23 THE COURT: Sustained. The jury can reach their own  
24 conclusion.

25 MR. LOWREY: Your Honor, it's the same question they

9:45:59AM 1 asked Mr. Eikey.

2 THE COURT: Are you asking her for an expert opinion  
3 or a lay opinion?

4 MR. LOWREY: A lay opinion based on rational  
5 perceptions.

6 THE COURT: I thought she said she was not qualified  
7 to give her that opinion but ask her again.

8 BY MR. LOWREY:

9 Q Sure. Forget the last question. Let's start with a  
10 fresh question. Just assume you are someone who drives  
11 around in cars. If you have a choice and you are going  
12 to be in a rollover, sorry. You have no preference  
13 between being in the vehicle in the middle and the  
14 vehicle on the bottom; no preference, that's not right is  
15 it?

16 A I can totally understand somebody looking at that saying,  
17 I don't want to be in that car that has all that damage.  
18 But I am not just a layperson. I'm an engineer and I  
19 know what happens in these crashes; and it's very  
20 complex. It's not just simply looking at the damage to  
21 the vehicle. And, in fact, we see that in this case.  
22 Mrs. Mills is deceased at the crash scene. Her roof is  
23 less deformed than Mr. Mills, who isn't deceased at the  
24 crash scene. So deformation of a vehicle does not tell  
25 you what the outcome is going to be. So I understand



9:47:18AM 1

that, but as an engineer it is far more complex.

2

Q I understand that you are not an expert, but the risk we are talking about in this case that Dr. Eisenstat testified happened in this case is the Mills suffocated. I'm asking you to assume for the purposes of my question.

6

Are you telling me that as far as positional asphyxiation is concerned, that you like the odds of the guy in the bottom truck just as much as the guy in the middle truck; are you saying that to the jury?

10

MR. MALEK: Objection asked and answered.

11

THE COURT: Overruled.

12

A I don't understand the medical aspects of what causes injuries. So then I can't answer that question. I can only speak to as an engineer I know it's a complex issue.

15

Q Okay, all right. If I were to walk up to that vehicle on the bottom -- you with me -- and look in the driver-side window that's facing us, you would expect that I would be able to see a passenger in the passenger seat; right? A five-foot ten passenger let's say hypothetically.

20

A It looks like you could see through the vehicle windows, yes.

21

22

Q That's probably not true if we look at say the middle photo. You can't even look through the driver side window, right?

24

25

A It's hard to tell from this perspective what you could

9:49:08AM 1 see if you moved the airbag out of the way.

2 Q Okay, fair enough. Let's move on. When did you first

3 see this 2015 Autoliv testing?

4 A I don't recall.

5 Q I'm not asking for a specific date. Do you think it was

6 around 2015 when it was done?

7 A No, I don't think I would have seen it that early.

8 Q Did you see it in the course of your work on the Hill

9 case? You are familiar with the Hill case, right?

10 A I am.

11 Q Did you see it during the course of your work on the Hill

12 case?

13 A I don't recall.

14 Q We heard some deposition testimony read to the jury of a

15 man named Ram Krishnaswami; do you know who that is?

16 A Yes, I do.

17 Q And he was the corporate representative of Ford in the

18 Hill trials, do you remember that?

19 A I don't know exactly what his role was, but I believe he

20 was at the Hill trial.

21 Q Fair enough. I am not quoting but I think I am pretty

22 close. He testified that the roof on the -- He was

23 talking about I think a 2002 F250, but a 2015 has

24 essentially the same roof; right? I know it has the side

25 airbags but in terms of roof strength that's basically

9:50:43AM 1

the same roof, right?

2

A Yes, the roof design has remained fairly constant over the years.

3

4

Q And he said something along the lines of the roof is perfectly safe and even in hindsight he wouldn't have changed anything; do you agree or disagree with that statement?

7

8

A I think Mr. Krishnaswami has the same experience with knowing all the complications of the factors and that there's been absolutely no studies that show causal correlation between roof strength and your risk of getting injured in a roll over accident. So I would agree with him that that is what the science says.

10

11

12

13

14

Q Well, what he said actually is even with the benefit of hindsight he would not have done anything differently; is that part of the statement you're agreeing with? I missed the yes in there somewhere. Is that part of the statement you were agreeing with?

15

16

17

18

19

A I don't know specifically what he's referring to there, but I could say that it's my opinion that the roof is safe.

20

21

22

Q Even with the benefit of hindsight you wouldn't if you could go back and put a 2006 ERSP for super duty trucks designed roof on this truck long before the Mills died; you wouldn't do that?

23

24

25

9:52:03AM 1

A As far as providing additional safety benefit to reduce your risk of injury there wouldn't be a difference associated with that, but the vehicle design is one complete design so certainly things evolve over time. I don't know specifically what he's referring to when he gave that answer.

2  
3  
4  
5  
6  
7 Q I think I heard no in there. No, you wouldn't even with the benefit of hindsight and ability to do it go back and put that ERSP roof on this truck before the Mills died?

8  
9  
10 A It would not have lowered the risk of injury in a rollover accident.

11  
12 Q You've explained twice but you haven't said, no. That means, no, right? No, you wouldn't have changed anything?

13  
14  
15 A Vehicle design is a more broad aspect than just the roof. The roof is integrated into the rest of the vehicle.

16  
17 Q You know it's okay to say, yes or no to me, just like it was okay to say it to Mr. Malek; right?

18  
19 A I am not, not, trying to saying yes or no. I am trying to explain the answer to your questions.

20  
21 Q Certainly you have the right to do that. I will never quarrel with that. But there's also nothing wrong with telling me, yes or no, and explaining; right? Do you understand that?

22  
23  
24  
25 MR. MALEK: Objection argumentative.

9:53:13AM 1 MR. LOWREY: I don't need an answer to that question  
2 Your Honor. I'll move on.

3 THE COURT: Okay, move on.

4 BY MR. LOWREY:

5 Q Entirely different topic. Let's talk about when this  
6 vehicle was originally being designed in the 90s; are you  
7 with me?

8 A Yes.

9 Q At some point Ford management signs off on the vehicle,  
10 correct?

11 A That's my understanding.

12 Q And that's that April 1996 sign off document that I think  
13 you testified about, right?

14 A No, I did not.

15 Q Let's get that for you then. If we can put up  
16 Defendant's Exhibit 169.

17 MR. MALEK: Your Honor, may I bring 169 to  
18 Dr. Vogler so she has the entirety of the document?

19 THE COURT: Yes.

20 BY MR. LOWREY:

21 Q Take a look at the front cover. We'll be looking at the  
22 analytical sign off for the PHN131 design.

23 A We are and it is that April 1996 date.

24 Q Great and PHN131 the jury has heard this, but just to  
25 confirm; that is a F250, correct?

9:54:53AM 1 A It's the program name for the super duty pickup.

2 Q So not just the 250 but the other super duty trucks?

3 A That's correct.

4 Q The jury has heard some testimony about this. I think

5 there are three different PHNs between 1999 and 2016; is

6 that correct?

7 A That's correct.

8 Q But the roof is materially the same in terms of roof

9 strength across all of those, correct?

10 A Yes. I would say the design is fairly consistent.

11 Q Fair enough. So that's right?

12 A Yes.

13 Q And then Ford started selling these trucks when? A 1999

14 model would be sold --

15 A Typically they get released in the fall. I don't recall

16 specifically, the Fall of the year prior to the model

17 year. So a '99 can get introduced in the fall of '98,

18 but I don't recall specifically.

19 Q They are certainly being sold by 1999, correct?

20 A Yes.

21 Q I apologize for my handwriting. So between those two

22 points analytical sign off and the vehicle being sold,

23 isn't it true that Ford didn't perform a single physical

24 test to determine the roof strength?

25 A It did not. It used a finite element analysis.

9:56:22AM 1 Q A finite element analysis, which is a species of computer  
2 assisted engineering; is that correct?  
3 A It's an engineering tool, yes.  
4 Q Computer modeling is that a close enough description for  
5 laypeople?  
6 A Well, computer modeling usually means you are developing  
7 a model and then FEA is finite element analysis and  
8 that's where you're now subjecting that model do  
9 different conditions to see how does it perform.  
10 Q Computer simulation, do you like that better?  
11 A It's not simulating it; it's actually analyzing it.  
12 Q I'm going to put computer; that much I understood.  
13 That's what Ford did. Ford actually did that back there,  
14 right?  
15 A Yes.  
16 Q And that computer work produces certain values for, among  
17 other things, for roof strength; correct?  
18 A Correct.  
19 Q After sign off right here in this space here there were  
20 some changes to the roof, right?  
21 A There were some slight modifications to some components,  
22 yes.  
23 Q We have Plaintiffs' Exhibit 182. Do you recognize this  
24 as a concern detail by roof engineer Sal Caruso?  
25 A I don't remember this document. No.

9:58:04AM 1 Q You know what a concern detail is, right?

2 A I have seen these over the years, yes.

3 Q If you look down on the left side where it says concern

4 description it says delete front header outer. Do you

5 see that?

6 A Yes.

7 Q So that's -- The front header had two pieces and one of

8 them is going away; is that roughly accurate?

9 A That's what that could refer to, yes.

10 Q The front header, just to remind the jury, that's the

11 part right above the windshield that connects the high

12 points for both A-pillar; correct?

13 A It's attached to the roof panel and it runs from left to

14 and ties into the tops of the A-pillars.

15 Q Okay, better than what I said, but the same thing; right?

16 So this was -- I'm just going to put an X and that is

17 front header out. If you look at the date on that

18 document that's June 1996, right?

19 A Yes. It says June 23<sup>rd</sup>, 96.

20 Q That's applicable right? After April is June.

21 A Yes.

22 Q Plaintiffs' Exhibit 185, this is another concern detail

23 and you see it's by Mr. Sal Caruso; you know how that is?

24 A I'm aware he works for Ford. Yes.

25 Q Worked at least. He is a roof engineer who was working



9:59:42AM 1 on the roof of the vehicle that ultimately became the  
2 Mills vehicle, is that fair?

3 A I don't know exact role, but yes, I've seen his name  
4 before.

5 Q Did you find the date on this one?

6 A It appears to be September 15<sup>th</sup>, 1998.

7 Q What happens? What is his concern?

8 A I can't see.

9 Q Take that down. You see concern description, down gauge  
10 A-Pillar by two percent from 2.4 millimeters to 2.35 for  
11 a cost savings of 0.70 cents per average on the vehicle;  
12 do you see that?

13 A That's what you've highlighted, yes.

14 Q That's after April 1996, right?

15 A It is.

16 Q Pull Plaintiffs' Exhibit 188, if you would? By now  
17 familiar to you this is another concern detail, again, by  
18 Ford roof engineer Sal Caruso; do you see that?

19 A Yes.

20 Q The concern is down gauge A-Pillar reinforcement from  
21 2.1 millimeters to 2.0 millimeters; do you see that?

22 A Yes.

23 Q Where is the A-Pillar reinforcement?

24 A It's one of the components that make up the A-Pillar,  
25 which are those things.

10:01:23AM 1

Q So it's part of the A-Pillar?

2

A Yes.

3

Q And it's a reinforcement. I take it, it's role is to make the A-pillar stronger than it would be without it.

4

5

A Typically they call inner and outer and then the reinforcement is the number that's in the middle between the inner and the outer.

6

7

8

Q Okay, helpful but my question is a little bit different.

9

It's called the reinforcement because it makes the A-pillar stronger than it would be without it, correct?

10

11

A It reinforces it. It's typically another component within there.

12

13

Q What was the date on this one? Looks like it's there in the middle.

14

15

A August 23<sup>rd</sup> of 1999.

16

Q That is the A-Pillar reinforcement; is that right?

17

A Correct.

18

Q Plaintiffs' Exhibit 189, and this is another concern detail from our friend Mr. Sal Caruso Ford roof engineer; do you see that?

19

20

A Yes.

21

22

Q And his concern is down gauge front header and SC/CC roof bows? We know what the front header is; can you help us with SC/CC roof bows?

23

24

A I think that would mean super cab/crew cab.

25

10:03:09AM 1 Q And the crew cab is the truck the Mills died in, right?

2 A It is.

3 Q And the roof bows are these things that go horizontally

4 from side to side that support the top of the roof?

5 A The roof bows are the components that run side to side

6 across the two side headers.

7 Q I'm holding this truck up and so am I tracing essentially

8 where the roof bows would be?

9 A Yes.

10 Q Do you have a date on that one for us?

11 A Looks like August 4<sup>th</sup>, 1999.

12 Q That was the header and roof bows, plural, right?

13 A Yes.

14 Q After those modifications are made Ford doesn't do any

15 physical testing before it starts selling the vehicle,

16 true?

17 A That is correct.

18 Q We don't have any computer analysis like the one that

19 they did from the April 1996 sign off reflecting the

20 effect of those changes, true?

21 A I'm not aware of an update to the computer analysis, but

22 certainly there could be engineering judgment that these

23 small changes aren't going to affect the performance.

24 Q The sign off wasn't accomplished based on engineering

25 judgment. The sign off was accomplished based on the

10:04:36AM 1 computer modeling that produced a specific number, right?

2 A That's correct.

3 Q They didn't do that again after the history we just went

4 through; that's my question.

5 A That's correct. If these things are incorporated it's

6 because some other judgment was made, but they would not

7 have had an effect in performance. So there wouldn't

8 have been a need to redo that analysis.

9 Q Have you seen a document writing down, recording in some

10 fashion that engineering judgment that you're

11 hypothesizing?

12 A I am have not other than my understanding of how things

13 are approved.

14 Q You didn't talk to any of the Ford engineers who are

15 involved at this stage, right?

16 A I did not.

17 Q Or in the Enhanced Roof Strength Project, right, didn't

18 talk to any of them?

19 A That is correct.

20 Q You've talked to Ford's lawyer about your expert opinion

21 testimony, fair?

22 A I've certainly talked with them over the course of this

23 case. Yes.

24 Q But no Ford roof engineers?

25 A That is correct.

10:05:47AM 1 Q You said this was all engineering judgment. Don't all of  
2 those cost concerns we just looked at together document a  
3 cost savings from the change?

4 A That's what the documents indicated, yes.

5 Q Are you aware of documents indicating that the Ford roof  
6 engineers were under a directive at this time for cost  
7 containment of the Ford 250 program, of the super duty  
8 program?

9 A That's something I'm not aware of as I sit here.

10 Q You've never seen the words cost-containment to the best  
11 of your recollection in any of the documents you've  
12 personally analyzed?

13 A Not that comes to mind as I sit here.

14 Q If I am not mistaken you either pulled it out as an  
15 excerpt or you looked at it in the original document. I  
16 don't know. But if you could give us Defense Exhibit 169  
17 and hopefully I've got the page right this time. Page 53  
18 of the PDF exhibit. Can you make that bit? We're not  
19 getting this right for some reason. To get to the roof  
20 part, make the top part of that bigger. You can ignore  
21 everything below that for purposes of my questions.

22 I think Mr. Malek correctly commented on the poor  
23 quality by today's standards of this 1996 document. It's  
24 not perfectly easy-to-read, but this top part is about  
25 structural safety roof crush; correct?

10:08:08AM 1 A That's what it's entitled, yes.

2 Q This is what you pulled out and testified about at one

3 point yesterday, right?

4 A That's correct. It's my understanding it's the results

5 of the finite element analysis.

6 Q This is what was done before April 1996 and produced Ford

7 management sign off, correct?

8 A Correct.

9 Q It says crew cab; that's what we're dealing with here,

10 right?

11 A Yes.

12 Q Their target was 10,500 pound roof strength, correct?

13 A Yes.

14 Q What they achieved through the computer was

15 10,484 pounds, right?

16 A Yes.

17 Q You don't have any analysis that between the time Ford

18 signed off and the time Ford started selling, you haven't

19 seen any analysis that confirms that the strength of that

20 modified roof would be 10,848 pounds; correct?

21 A Not in that windows; that's correct.

22 Q As far as you know, if we could go back in time before

23 1999 when Ford starting selling this roof and did the

24 same computer assisted engineering analysis; that number

25 10,484 might be different?

10:09:26AM 1 A Well, we have tests that were done later in time.

2 Q We're going to talk about those in good time.

3 MR. MALEK: Your Honor, he's interrupting the  
4 witness.

5 MR. LOWREY: I apologize Your Honor.

6 BY MR. LOWREY:

7 Q If I was unclear I was just talking about for right now,  
8 the period between sign off and sale; are you with me?

9 A Yes.

10 Q And I am going to give you a chance to talk about those  
11 other tests I promise. I've got some questions about  
12 those too. To repeat my question, which I don't think  
13 was that artful the first time around.

14 If we went back in time and Ford did the same  
15 computer analysis that was done before sign off on the  
16 roof as modified, you don't have any way of knowing  
17 whether that number would still be 10,484; correct?

18 A I don't have the actual results from that analysis. I  
19 can say from the magnitude of those changes of the  
20 materials I wouldn't expect to see much of a difference  
21 in the assembled structure performance.

22 Q Have you ever seen documentation of that by any Ford roof  
23 engineer, what you've just said?

24 A Not in that time period that you're talking about.

25 Q As a general matter, you don't make roofs stronger by

10:10:36AM 1 taking out parts and taking out metal; is that generally  
2 true all else being equal?

3 A It is a result of how it will affect the assembled  
4 structure all together. So making those small changes in  
5 thicknesses wouldn't anticipate that that would affect  
6 the overall performance.

7 Q Even if we took 10,484 and divide it by the weight of the  
8 vehicle Mr. Tandy assumed 8,000. Mr. Tandy on whom you  
9 rely, right, the roof reconstructionist?

10 A Yes.

11 Q So even if we took 10,484 and divide it by the 8,000  
12 pound vehicle weight; that comes out somewhere around  
13 1.3. Do you need a calculator?

14 A I think it would be in that order of magnitude. I don't  
15 have calculator.

16 Q And that's not good is it, 1.3?

17 A It is a number that doesn't apply to this heavyweight  
18 vehicle. So what its strength to weight ratio is not  
19 something that is a target for this particular vehicle.

20 Q So when you say the number doesn't apply what you mean is  
21 as a matter of regulatory law at the time that didn't  
22 apply, correct?

23 A Exactly. That number is the strength to weight ratio  
24 that's calculated in the FMVSS216 test.

25 Q And your not saying that -- Forget regulations for a



10:12:09AM 1

moment because you know those are the minimum

2 regulations, right? You have studied the magnitude of

3 that.

4 A You have to meet them to sell a vehicle sold in the U.S.

5 Q I'm going to say it a little bit different. You have to

6 meet them, but they are the minimum standards meaning you

7 can do more, right?

8 A Yes, you can.

9 Q You're not saying strength to weight ratios don't apply

10 because that's a physical concept that can apply to any

11 vehicle. You're just saying the regulation didn't apply;

12 is that correct?

13 A That's correct.

14 Q Do you know what the Insurance Institute for Highway

15 Safety is? Do you know what entity is, that institution?

16 A I do.

17 Q It's a nonprofit and it's sponsored by insurers who will

18 save money if fewer people are injured in car crashes; is

19 that fair?

20 A That I don't know.

21 Q Do you know what the IIHS would say of how it would rate

22 a roof with a SWR of 1.3?

23 A Well, their current standards that's below their lowest

24 level. But those standards they never evaluated these

25 super duty heavy, very large pickup trucks with their

10:13:31AM 1

standards.

2 Q The heavier a truck comes down the more force on its roof  
3 relative to say a passenger car or light truck; is that  
4 fair, all else being equal?

5 A It depends on how it engages the ground, but, yes, you  
6 have a higher weight of the vehicle that could be  
7 applied.

8 Q Everything else being equal, 10,000 pound vehicle and an  
9 8,000 pound vehicle is going to come down with more force  
10 than say a 5,000 vehicle; fair?

11 A It depends on if the weight is affecting the force that  
12 is engaging with the ground.

13 Q It depends on this crash happening with gravity?

14 A No. It depends on how the vehicle is engaging with the  
15 ground during any particular impact. Typically, a  
16 vehicle is rolling so what it sees during that rollover  
17 it depends on how much of the vehicle weight is actually  
18 being applied at that time.

19 Q I understand you are saying none of this matters, but  
20 there's no reason why the SWR should be lower for a big  
21 heavy vehicle than it is for say a passenger car. No  
22 good reason for that is there?

23 A Well, yes. With these very heavy vehicles they have a  
24 wide range of weights they can have associated with them  
25 and a wide range of designs.

10:14:53AM 1 Q Going back to IIHS. It would be in their lowest  
2 category, but would you be surprised to hear that to get  
3 a poor from IIHS you have to have at least a 2.5; is that  
4 consistent with your understanding?

5 A I don't know if it has an at least value. I think they  
6 have the cutoffs as to when they transition to the  
7 various categories. I don't recall exactly as I sit  
8 here.

9 Q Sorry, 1.3 is about half of poor according to IIHS?

10 A If we are simply ratio-ing out the numbers, yes.

11 Q Do you agree with me that the forces of a rollover crash  
12 can easily exceed twice the vehicle's weight?

13 A Depends on how it engages with the ground, but there may  
14 be some orientations where that's true.

15 Q Do you think that's uncommon or a relatively common level  
16 of force in a rollover?

17 A It depends. Because you have dynamic conditions going on  
18 and we talked about that before. When you dynamically  
19 load something the applied forces go up. So that's where  
20 you may have factors of amplification because of dynamic  
21 loading conditions. So the load goes up that the vehicle  
22 sees, but also the strength of the vehicle goes up as we  
23 saw using Mr. Herbst dynamic loading test.

24 Q My question is just a little bit different. It wouldn't  
25 surprise you in a rollover crash to see forces of twice

10:16:35AM 1

the vehicle's weight however they impact wherever they  
impact?

2

A They are chaotic events, yes. There can be conditions.  
Where you get very high loads developing.

3

Q You call two times vehicle weight a high load versus  
three times, four times, five times? You see those too,  
right?

4

A You can have conditions where you can get some very high  
loading such as in this case.

5

Q Let's talk about one of the things. I think you wanted  
to jump ahead to and we are there now is the 2006 NHTSA  
platen test on a 2003 Ford F350; do you remember  
testifying about that?

6

A I don't know. The platen test is what we are talking  
about?

7

Q Yes. The one where you did the math and converted  
Newtons to 10,066 pounds; are you with me?

8

A I'm not certain exactly what you are referring to. Say  
that again if you could.

9

Q You and Mr. Malek discussed a NHTSA platen test. You  
kept talking about a test conducted by NHTSA of a 2003  
Ford F350; do you remember that?

10

A I don't know that Mr. Malek and I discussed it, but, yes,  
I'm aware of that test.

11

Q Do you recall yesterday translating Newton into pounds

12

10:18:01AM 1 for us and getting 10,066? I think Mr. Malek even wrote  
2 that up on the chart; do you remember that?  
3 A Yes. I know that we were reading. I thought that we  
4 were referring to the FEA analysis yesterday.  
5 Q You did that as well.  
6 A I don't believe Mr. Malek and I discussed additional  
7 tests.  
8 MR. MALEK: If I may help? We did not go through  
9 that with Dr. Vogler. We went through that with Christopher  
10 Eikey. Defense Exhibits 186.1 and 186.2 were those two tests.  
11 There's no objection.  
12 MR. LOWREY: That's helpful Paul. Thank you!  
13 BY MR. LOWREY:  
14 Q So it wasn't you. It was Mr. Eikey who testified about  
15 that.  
16 A I didn't think I talked about it yesterday.  
17 Q That's fair and I was sure you did, but I make mistakes.  
18 Let's assume for the purposes of my question that  
19 Mr. Eikey talked about a platen test on a 2003 Ford F350  
20 where the roof strength -- and he had to convert it from  
21 Newtons and I am just going to trust that he did that  
22 right because I don't know what Newton is -- but the roof  
23 strength was 10,066 pounds. You assume that with me  
24 10,066 pounds?  
25 A All right.

10:19:25AM 1 Q Now, if we compared that to an 8,000-pound vehicle weight  
2 you get something around 1.25; does that sound about  
3 right?  
4 A I don't have the numbers here to do that.  
5 Q I don't mean to make you do math in your head. I'm going  
6 to hand this to you. Can you to d the math of a roof  
7 strength of 10,066 pounds divided by an 8,000 pound  
8 vehicle? Are you laughing at the simplicity of my --  
9 A No. I put too many zeros, but it's 1.26.  
10 Q Fair enough. We talked about this earlier. That's about  
11 half of a poor according to IIHS, right?  
12 A I don't recall what the level is for IIHS.  
13 Q Do you recall Ford's internal standard for roof strength  
14 around this time?  
15 A In that time period the roof strength for vehicles with a  
16 GBWR under 6000 was 1.5.  
17 Q 1.5 at Ford. I'm talking about NHTSA. I'm talking about  
18 Ford's internal standard. Have you ever heard 1.85 as  
19 Ford's internal standard?  
20 A There was a standard for vehicles where FMVSS216 applied  
21 to them and it had a 15 percent additional over the 1.5.  
22 Q Does that get us mathematically to around 1.85?  
23 A I think it was 1.725.  
24 Q Fair enough. In any event, higher than 1.26; right?  
25 A Yes, for vehicles that that standard applied to.

10:21:17AM 1 Q You talked about a drop test that Brian Herbst conducted  
2 and you told the jury that it showed something like  
3 17,000 pounds?  
4 A Correct.  
5 Q That's what's called a dynamic test, right?  
6 A That is a dynamic.  
7 Q So to get kind of SWR's that NHTSA talks about and that  
8 IIHS talks about, you couldn't just divide 17,000 by  
9 8,000-pound vehicle; correct?  
10 A If you are using NHTSA or IIHS, no. You use a  
11 quasi-static test number.  
12 Q So you wouldn't base any roof ratio that you reported  
13 either to NHTSA or to IIHS in that fashion using the drop  
14 test, correct?  
15 A That's correct.  
16 Q Do you recall the vehicle weight give or take in  
17 Mr. Herbst's drop test that we are talking about?  
18 A No, not as I sit here.  
19 Q 6,131 pounds sound right?  
20 A I would have to go back to the test report.  
21 Q If it's 6,131 pounds and Mr. Tandy's vehicle is  
22 8000 pounds, it's about a 30 percent difference; right  
23 heavier?  
24 A 2000 pounds out of eight thousand is about 25 percent.  
25 Q That's faster than I could have done it in my head. I

10:22:58AM 1 had to use a calculator but -- All else being equal, the  
2 heavier the vehicle the lower the SWR. Same roof, same  
3 conditions, same everything the heavier the vehicle the  
4 lower the SWR; correct?

5 A When you calculate SWR its the peak measured load divided  
6 by the weight of the vehicle. So the bigger the weight  
7 of the vehicle the lower the SWR.

8 Q Let's talk about Mr. Tandy's accident reconstruction.  
9 The one that you testified about relying on; do you  
10 remember that testimony?

11 A Yes.

12 Q According to Mr. Tandy, what was the first point of  
13 contact between the truck and the ground? The roof of  
14 the truck and the ground. I understand the front  
15 impacts, leave those aside. As far as the roof structure  
16 is concerned, where did the truck hit first?

17 A My understanding is that because of the rotational pitch  
18 of the vehicle that it's landing on the passenger side;  
19 it's biased on the passenger side.

20 Q Biased on the passenger side is engineering talk for it  
21 hit on the passenger side; is that right?

22 A It contacted the ground with the roof structure. It was  
23 just slightly oriented so that it's contacting likely  
24 first the passenger side.

25 Q Isn't Mr. Tandy's reconstruction that the truck struck



10:24:28AM 1

first right here were the A-Pillar and the front header;  
that corner right there? Is that true?

2

3

A Yes, that would make sense because of that pitching.

4

Q I agree. It didn't do this and land perfectly flat on  
the roof contacting all surfaces equally, correct,  
according to this reconstruction?

5

6

A Well, it's pitching at such a fast rate that that contact  
with the A-Pillar and the rest of the roof is very close  
to each other in time. But, yes, the very first location  
would be the A-Pillar.

7

8

Q There's a point in time where every bit of this crash  
energy that's left is coming down on the top of the  
pillar. I understand all of this happens fast, but there  
is a point in time for that; correct?

9

10

11

12

A It's not necessarily every bit of energy because the  
vehicle still has more energy as it's engaging the entire  
roof. All the vehicle's energy once the roof engages the  
ground goes into the roof.

13

14

Q So the roof did not strike the ground flat with even  
forces on all parts of the roof at the same time; is that  
fair?

15

16

A It eventually did, but the first engagement, yes, because  
of the pitch.

17

18

Q It eventually ends up on its roof. The roof is not flat  
but leave that aside. I get that. But as it's striking

19

10:25:49AM 1 the ground with the energy that others have described, it  
2 is not applying that energy equally to all portions of  
3 the roof; fair?

4 A It is considered one event although it is first  
5 contacting the A-Pillar, but yes. Eventually, the whole  
6 structure is absorbing the full energy of that vehicle.  
7 But the very first contact because of the pitch would be  
8 that A-Pillar.

9 Q Does that mean yes to what I said? There is not a point  
10 in the crash when all of the force is pressed equally on  
11 the roof at the same time until the vehicle comes to  
12 rest.

13 A No. That force is distributed because the vehicle is  
14 still moving so it's being distributed to the roof  
15 structure.

16 Q Through the A-Pillar where it joins the header; that's  
17 the only thing at the very beginning that's on the  
18 ground?

19 A That's the first touch point, yes.

20 Q Fair enough. You testified about a test that as I  
21 understand your point it was that the Ford F250 roof has  
22 a 30,000-pound strength; do you remember that?

23 A Yes.

24 Q That was based on something called the horizontal platen  
25 test, correct?

10:27:07AM 1

A Yes.

2 Q Sometimes a flat platen test, correct?

3 A Yes.

4 Q Used for school buses do you know that?

5 A That's one of the applications, yes.

6 Q Well, one of the applications is not testing roofs for  
7 strength to weight ratio tests that will satisfy NHTSA or  
8 IIHS, correct?

9 A That's correct.

10 Q The premise of this test -- Where is my truck? The  
11 premise of this test is the vehicle is flat on the ground  
12 and the platen is hydraulically driven and it comes down  
13 on the roof simultaneously engaging the entire structure,  
14 correct?

15 A Yes.

16 Q Does not come down like this, right, or like this?

17 A That's correct.

18 Q Let's contrast to the test that NHTSA uses for roof  
19 strength and the strength to weight ratio, the platen is  
20 what's first of all a lot smaller; right?

21 A It is.

22 Q It presses down at an angle forward and to the side angle  
23 right on the driver side onto the A-Pillar and the header  
24 where the Mills truck first contacted the ground;  
25 correct?

10:28:15AM 1 A Yes, it can be run on either side.

2 Q The reason that both NHTSA and IIHS use that is because

3 that is a very common ground strike in a rollover as the

4 car rolled whether it's sideways or over. Hitting on

5 that point is very common.

6 A Well, it's not a pitching so the motion you're showing is

7 a pitching; that's not why NHTSA has developed that

8 particular test. They did it for a sideways roll.

9 Q Just talk about the kind of rollover. That point of

10 contact is very common for horizontal rollover or barrel

11 rollover, correct?

12 A Yes.

13 Q And so the 30,000 pounds is what this roof would bare if

14 you press down on it evenly all at the same time;

15 correct?

16 A As you engage all the pillars from that loading, yes.

17 Q That's not what happened in this crash?

18 A It did engage all the pillars from that loading. Yes, it

19 did.

20 Q After it hit on the A-Pillar, correct? We've talked

21 about that.

22 A Yes, it made first contact at such a rapid pitch in

23 coming to rest that it engaged all of those pillars as it

24 was absorbing the energy.

25 Q Let me ask it this way then. If you did a NHTSA platen

10:29:40AM 1

test, the angled one that presses down on the corner of  
the A-Pillar and the roof, you're not saying that would  
come out and measure 30,000 roof strength are you?

2  
3  
4 A It would not.

5 Q Plaintiffs' Exhibit 114, you have seen this one before,  
6 right?

7 A I don't recall seeing this specific document, no.

8 Q Let's get you oriented. It's titled on the top the 2006  
9 Annual Engineering Technical Excellence TMM Awards Entry;  
10 do you see that?

11 A That's what it says, yes.

12 Q It looks like something that someone would fill out to  
13 apply for an award?

14 A It don't know. It says award entry.

15 Q Fine the submitter's name is Hikmat Mahmood; do you know  
16 who that is?

17 A I've seen his name before, yes.

18 Q Like you he is a Ph.D. engineer, right?

19 A I don't recall his education.

20 Q Unlike you he actually was a Ford roof engineer, right?

21 A I believe he worked for Ford, yes.

22 Q The project title as you see there, Enhanced Roof  
23 Strength for Super Duty Truck; are you familiar with that  
24 project?

25 A I believe that's what we were talking about earlier, yes.

10:31:07AM 1 Q I want to ask you about three lines down under the  
2 executive summary P131 vehicle; that's the super duty,  
3 right?  
4 A Yes.  
5 Q Considered in this study weighed 8000 pounds and had a  
6 roof strength of 8,900 pounds; do you see that?  
7 A That's what it says, yes.  
8 Q So someone actually working on this roof trying to  
9 improve it measured the roof strength at 8,900 pounds  
10 against a vehicle weight of 8,000 pounds; correct?  
11 A I don't know how they came up with those numbers.  
12 Q Have you ever talked to Dr. Mahmood?  
13 A I have not.  
14 Q Have you ever asked Ford if you could talk to  
15 Dr. Mahmood?  
16 A I have not.  
17 Q I understand you may quarrel with it, but my question is  
18 a little bit different; that's mathematically about a 1.1  
19 SWR?  
20 A Whatever those two numbers divide out to, yes.  
21 Q And again, I understand you may quarrel with that and  
22 that's fine, but 1.1 is a SWR for a vehicle that would  
23 barely support its own weight if sat on its roof;  
24 correct?  
25 A No. I don't know exactly what orientation they are

10:32:26AM 1 talking about these two, but when a vehicle is sat on its  
2 roof it's not going to be in a FMVSS216 angle kind of  
3 orientation.  
4 Q You made my point back to me, right? Putting a flat is  
5 different than striking on the top corner of the  
6 A-Pillar.  
7 A Correct.  
8 Q Fair enough. We will move on from that. Let us see  
9 Plaintiffs' Exhibit 114, 8000W, 8900S for strength equals  
10 about 1.1?  
11 A Your math is wrong. It's the strength divided by the  
12 weight if you are --  
13 Q So the strength needs to go here and weight there and  
14 then we get about that.  
15 A Whatever the number is when you divide those two, yes.  
16 Q There is a reason why I went to law school and not  
17 anything where I had to measure anything. Fair enough.  
18 236, you know this one right?  
19 A I don't recall this specific document.  
20 Q North American Fleet Roof Strength Assessment, do you see  
21 that part of the title?  
22 A That's what the title says, yes.  
23 Q It's oriented wrong but off to the jury's left there are  
24 some little words in the center that say produced by  
25 Ford; do you see that?

10:34:14AM 1 A Yes, I do.

2 Q It's a September 2005 document, right?

3 A That's what it indicates.

4 Q This is getting into the Enhanced Roof Strength Project  
5 for Super Duty Trucks?

6 A I don't recall the exact timing of that.

7 MR. LOWREY: We move to admit Plaintiffs'  
8 Exhibit 236 as a Ford document.

9 MR. MALEK: I don't believe Plaintiffs have  
10 established foundation or personal knowledge, Your Honor, so  
11 we object.

12 MR. LOWREY: First of all, the document should come  
13 in; it's a Ford document with undisputed authenticity. And  
14 then we will have to wait for my question to see whether Dr.  
15 Vogler can answer it.

16 THE COURT: Establish the foundation with her other  
17 than authenticity. Do you know what this is ma'am?

18 THE WITNESS: No, I don't recall this document.

19 MR. LOWREY: Take us to page 2 and I want you to  
20 compare this to what we read before. Now, you saw a table  
21 like that in the original vehicle sign off; right?

22 MR. MALEK: Objection, Your Honor, the witness just  
23 said she was unfamiliar with the document.

24 MR. LOWREY: I don't care if she has ever seen the  
25 document Your Honor. I want to ask her about numbers on the



10:35:33AM 1 document and things that she constantly testified to  
2 yesterday.

3 THE COURT: Do you know what any of this is?

4 THE WITNESS: No, I don't recall seeing this.

5 THE COURT: She has no knowledge.

6 MR. LOWREY: We tender it. I understand I may not  
7 be able to ask her about it, but we tender it as an authentic  
8 Ford document. Is that granted?

9 THE COURT: Any objection to the document being  
10 admitted?

11 MR. MALEK: No, Your Honor.

12 THE COURT: It's admitted without objection. What  
13 number is it?

14 MR. LOWREY: P. 236.

15 BY MR. LOWREY:

16 Q Are you aware of how the Ford engineers involved in the  
17 Enhanced Roof Strength Project calculated the current  
18 roof strength in 2005 of the Ford 250; do you know?

19 A I don't know.

20 Q Do you know if it's lower than 10,484 as indicated on the  
21 April 1996 sign off that you testified about?

22 A My understanding was there were some studies that were  
23 done using a model just to look at the effects of  
24 different kinds of changes. I've never seen a document  
25 that validates that that is reflective of what the actual

10:37:05AM 1

vehicle was.

2 Q You've never seen a document that says current roof  
3 strength estimate in pounds approximately 9000. You've  
4 never seen that?

5 A I don't recall seeing this particular document, no.

6 Q You don't recall testifying about it in any of the past  
7 cases?

8 A Nothing comes to mind.

9 Q If you don't know about it you have no basis to quarrel  
10 with it, is that fair?

11 A I don't know the underpinnings of it as I sit here.

12 Q Well, we will look at that at a different time. Take  
13 that down. In this trial we've talked about it a bunch.  
14 You are familiar with strength to weight ratio, correct?

15 A Yes.

16 Q That's strength divided by weight, correct?

17 A Yes.

18 Q There's a calculator up there and I would like for you to  
19 calculate the strength to weight ratio of the vehicle  
20 with a roof strength of 10,000 pounds?

21 A Unfortunately, your phone is locked.

22 Q Let's look at this. There you go. So with a roof  
23 strength of 10,000 pounds; what's the SWR?

24 A I would need the other number to divide by. You said  
25 10,000 pounds.

10:38:38AM 1 Q Yes, that's the roof strength. Don't you need the weight  
2 to tell the SWR?  
3 A Yes, you need both numbers.  
4 Q That's because force equals mass times acceleration,  
5 right?  
6 A That has nothing to do with SWR. SWR is just simply  
7 dividing strength by weight.  
8 Q Strength over weight, okay?  
9 A Correct.  
10 Q So if we just look at the we don't know what the SWR is,  
11 right?  
12 A Correct.  
13 Q And so let's say the strength holds at 10,000. If the  
14 weight is 5,000 or if the weight is 8,000 the SWR is  
15 going to be different; correct?  
16 A Correct.  
17 Q We care about that because the weight of the vehicle is  
18 one of the things that determines the force with which it  
19 strikes the ground, correct?  
20 A If you're doing that calculation it's because you're  
21 trying to evaluate its performance of that 216 test.  
22 Q The reason someone would take into account the weight is  
23 because they a heavier vehicle, all things being equal,  
24 strikes the ground with the more force than a lighter  
25 force; right?

10:39:56AM 1 A The SWR calculation is simply to look at a particular  
2 metric for the FMVSS216 test.

3 Q Changing topics now.

4 THE COURT: Mr. Lowrey, let's get closer to the  
5 finish line. How much longer do you have?

6 MR. LOWREY: Twenty minutes.

7 THE COURT: We need to move along. Go ahead.

8 MR. LOWREY: Sure. I will take your cue, Your  
9 Honor.

10 BY MR. LOWREY:

11 Q Let's move into 2015 and that's the model year of the  
12 Mills vehicle. At that time would you agree that Ford as  
13 a matter of roof strength was well behind its  
14 competitors; would you agree with that?

15 A In that particular time period there were other vehicles  
16 that were designed with more materials that were able to  
17 carry higher levels of force. And because those vehicles  
18 in their application for the heavy duty, which would be  
19 the competitor to the super duty truck, because the  
20 platform didn't change; they were able to incorporate  
21 those materials to actually do better in the 216 test.

22 Q Do you remember the strength to weight ratio of the 2015  
23 Chevrolet Silverado 1500?

24 A Not as I sit here.

25 Q What about the 2015 Dodge Ram 1500?

10:42:11AM 1 A Again, not as I sit here.

2 Q The 2015 Nissan Titan?

3 A Not as I see here.

4 Q The same for the 2015 Toyota Tundra, right?

5 A Same.

6 Q I'm going to hand a note to her. This is page 24 of your

7 report?

8 A Yes. I do have those numbers.

9 Q Good, could you read it to the jury?

10 A Certainly. The 2015 Chevrolet Silverado 1500 strength to

11 weight ratio of 4.1. The 2015 Dodge Ram 1500 had the

12 strength to weight ratio of 2.97. The 2015 Nissan Titan

13 had a strength to weight ratio of 3.56. The 2015 Toyota

14 Tundra had a strength to weight ratio of 3.94.

15 Q The 2015 Ford F150 had a roof strength of?

16 A Depends on whether those are calculated by the specific

17 weight of those vehicles.

18 Q Have you seen calculations putting Ford's F150 from 2015

19 at over 5.5?

20 A I don't recall the specific numbers.

21 Q Do you remember if it's over five?

22 A Not as I sit here without the test. I don't recall it.

23 Q You can't say if Ford's F250 from 2015, which is really a

24 1999 roof; correct?

25 A Yes.

10:43:48AM 1 Q You can't say that it eats any of these strength to  
2 weight ratios can you?

3 A It does not. We've been talking about what the  
4 calculated values are, but those are the F150 version of  
5 those pickup trucks, which is a much lighter weight  
6 vehicle. So that calculated number is based on the  
7 weight of those vehicles which are, again, much lighter  
8 weight.

9 Q You're not disputing that Ford could take a roof from its  
10 own 2015 F150 and put it on the 250; you are not  
11 disputing that are you?

12 A It's a different platform. I think with engineering you  
13 could probably incorporate some of those characteristics.

14 Q We don't have to speculate about that because that's  
15 exactly what they did in the 2017 model year, right?

16 A I think they incorporated some of those advancements,  
17 yes.

18 Q Is so-called ROCS testing part of what leads you to say  
19 that there is no correlation between roof deformation and  
20 injury?

21 A I'm generally familiar with ROCS; it's not something that  
22 I have specifically looked in to.

23 Q I won't ask you about it then. Are you familiar with the  
24 external cage around the truck?

25 A That's my understanding.

10:45:19AM 1 Q The purpose of that is to prevent any roof deformation  
2 during a crash, correct?

3 A My understanding is it's to look at occupant kinematics  
4 by taking out any factor of roof damage or deformation.

5 Q So a truck that has gone through a ROCS tests will never  
6 by design have the roof crush down on the passenger,  
7 correct?

8 A They remove the ability to damage the roof because of  
9 that cage.

10 Q I understand you are not an expert but it would also  
11 remove the ability to test the vehicle to put a dummy in  
12 a position of positional ASPHYXIA, correct? You can't  
13 change the dummy's position.

14 A That I don't know.

15 Q I think we can make short work on this. Yesterday we  
16 heard some testimony from Mr. Eikey about test dummies  
17 used in the kinds of tests that Ford relies on to say  
18 that roof crush doesn't matter. Take my word for it. He  
19 said he couldn't testify about the bio-fidelity of those  
20 dummies in a rollover because he was not a mechanical  
21 engineer. Bio-fidelity, do you know what I mean; whether  
22 the dummy full moves like a human being in a crash?

23 A I think he could be referring to whether it's going to  
24 give representative values.

25 Q And the issue there is on the stiff neck. Are you

10:46:53AM 1

generally aware of that?

2 A I'm sorry. I didn't understand that question.

3 Q The issues there and the controversy there is on the  
4 necks too stiff; are you aware of that?

5 A I don't know what issue you are referring to.

6 Q Fair enough. I think I know the answer to this question.  
7 You are not a biomechanical engineer either, correct?

8 A I am not.

9 Q You cannot supply testimony that the dummies used in this  
10 rollover testing are biofidelic in a rollover?

11 A That would be outside of my area.

12 Q Understood. And you've reviewed Mr. Herbst report,  
13 correct?

14 A I did.

15 Q You are here to be anti-Herbst if you will. You are  
16 their Herbst and Herbst is the person who gave the kind  
17 of testimony you are giving for us; is that fair? That  
18 was a terrible question. Forget that. Why were there  
19 laws and sketches to rebut in the report to Brian Herbst?

20 A It's to review it and respond to what his opinions are,  
21 yes.

22 Q I don't recall any response in your report or in your  
23 testimony yesterday about the portions of Brian's report  
24 where he talks about this bio-fidelity issue; is that  
25 correct?



10:47:54AM 1 A I'd have to go back into my report, but I am aware that  
2 Mr. Herbst and Mr. Herbst company have used hybrid three  
3 instrumented dummies in their inverted drop tests.  
4 Q We saw a document from 1997 where he had done that; is  
5 that what you are talking about?  
6 A I don't recall the exact timing of it.  
7 Q You learned some things since 1997, right?  
8 A Yes.  
9 Q And automotive safety has been allowed to develop since  
10 1997 also fair?  
11 A Yes, sir, I have.  
12 Q Are you familiar with what NHTSA says about the  
13 bio-fidelity of these dummies as far as simulating human  
14 movement?  
15 A I don't know specifically what they have said about it.  
16 I know that they are not -- They are still using their  
17 quasi-static 216 with a head form currently.  
18 Q You also reviewed Mr. Herbst description in his report of  
19 a strengthened vehicle he made; it was production F250 he  
20 modified it to make the roof stronger. Do you recall  
21 that?  
22 A Yes.  
23 Q If we could have 582C so that we are on the same page.  
24 Let's make this larger, the top one. The top one is the  
25 Mills' vehicle, correct?

10:49:28AM 1

A That's what this says. Yes.

2 Q The one in the middle is a production test vehicle and an  
3 unmodified test vehicle, a F250; right?

4 A That's correct. This looks like after he did three drops  
5 of a vehicle. I think this is the test where he dropped  
6 it three times.

7 Q Regardless, you examined and don't contradict his claim  
8 that he conducted exactly the same test on both the  
9 vehicle in the middle and the vehicle on the bottom?

10 A That is correct.

11 Q The middle photo is what the production vehicle, in other  
12 words, the kind of roof Mills had did when he conducted  
13 that test; correct?

14 A It's actually three tests that he did, but fair enough.

15 Q At the end of the day that's what that vehicle looks  
16 like, right?

17 A That's correct.

18 Q At the end of the same day, the one on the bottom is what  
19 his reinforced vehicle looked like, right?

20 A That is correct.

21 Q We heard Mr. Eikey talk about this -- maybe it was meant  
22 to disparage I don't know -- about something that had  
23 just been built in a garage. Ford could certainly do  
24 better than a couple of guys working in a garage as far  
25 as roof strength is concerned, right?

10:50:42AM 1 A I think that they have design engineers. There is a wide  
2 breadth of engineers that they incorporate when they do  
3 vehicle designs.

4 Q They've got a big production facility, actually multiple.  
5 They are not working in anybody's garage, right?

6 A They have test facilities that's correct.

7 Q Bit production facilities?

8 A Absolutely, manufacturing plants.

9 Q I'll have to ask you the same question about which  
10 vehicle you'd rather be in if you were in a rollover, but  
11 you're going to give me the same answer before; right?

12 A I am. The laws of physics haven't changed.

13 Q Got it. If you had to sit in that during the drop test,  
14 identical to drop test, still no preference between the  
15 one in the middle and the one on the bottom?

16 A I can tell you from analyzing and doing testing that is  
17 correct.

18 Q The last thing I want to ask you about and I understand  
19 you don't think they are right, but it is a fact that  
20 NHTSA after considering the submissions of the automakers  
21 about this injury correlation point disagreed; is that  
22 correct?

23 A I'm not certain what you are referring to.

24 Q So NHTSA in 2001 announced a rule making saying, we're  
25 thinking about increasing roof safety standards and

10:52:04AM 1 expanding the classes of vehicle to which they apply;  
2 correct?

3 A Yes.

4 Q And then they ended up finally saying something in 2009,  
5 does that sound about right?

6 A That is correct.

7 Q An eight-year rule making process that's Washington D.C.;  
8 what are you going to say? But during period a couple of  
9 things have happened as automakers, including Ford  
10 submitted comments to NHTSA making the same points you  
11 have about the supposed lack of any correlation between  
12 injury and roof strength; correct?

13 A That is correct.

14 Q And having considered that NHTSA did not agree with you,  
15 is that fair?

16 A NHTSA formed the opinion that by making a roof stronger  
17 that they may afford a reduction in risk of cervical neck  
18 injuries to individuals in rollover crashes. That's why  
19 one of the things that they have based their change in  
20 the standard on, not the kind of injuries in this crash,  
21 but that's what they were looking at cervical spine  
22 injuries.

23 Q Did they say stronger vehicle roofs save lives and  
24 prevent incapacitated injuries in rollover crashes?

25 A Yes, for that population of individuals that's what they

10:53:19AM 1

--

2 Q Did they say an increase in strength by one unit of the  
3 peak SWR is predictive to reduce the odds of non-ejected  
4 occupant suffering severe injury by about 14 percent?

5 A I don't recall what specific study you are referring to.

6 Q Did they a vehicle with a larger SWR is more likely to  
7 maintain an occupant survival space when a vehicle roles,  
8 resulting in higher survivability and less occupant  
9 injuries that are less serous?

10 A I don't recall them saying that but I am aware that they  
11 did a study in their proposed rule making that indicated  
12 that it wasn't going to provide additional protection to  
13 on the issue of ejection.

14 Q So that's keeping people in the vehicle, right?

15 A That's correct.

16 Q If you keep them in the vehicle you have got to be sure  
17 they don't get crushed while they are kept in the  
18 vehicle, right?

19 A I'm not understanding your question.

20 Q That's fine. Those are all of my questions.

21 THE COURT: Redirect Mr. Malek.

22 MR. MALEK: Yes, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. MALEK:

25 Q Dr. Vogler, Mr. Lowrey cross-examined you a few issues

10:55:44AM 1 here. I want to talk about a couple of them, okay?

2 A All right.

3 Q On is he showed you a chart that was in your report  
4 toward the end of the cross-examination; do you recall  
5 that?

6 A Yes.

7 Q You mentioned a 2015 Dodge Ram and that was a 1500,  
8 right?

9 A That's correct.

10 Q What does that mean when I say 1500 versus a Dodge Ram  
11 2500 or the Ford F150 versus the Ford F250; what does  
12 that mean? Please explain.

13 A The higher the number it affect what the payload  
14 capability of the truck; what those trucks can be used  
15 for. So if you buy a F150 that's usually the kinds of  
16 pickups that you see on the road when you go up to the  
17 250, 350, and so forth. Those have broader applications  
18 than more work trucks and they typically have much higher  
19 weights.

20 Q He also mentioned a 2015 Nissan Titan, correct?

21 A Correct.

22 Q And a 2015 Nissan Toyota Tundra, correct?

23 A Correct.

24 Q Do you recall what the strength to weight ratios were in  
25 the vehicles?

10:57:17AM 1 A I don't, but I have my report.

2 Q Page 12, please. While you are looking, Brian Herbst's

3 minimum roof strength is 4.0 strength to weight ratio?

4 A Correct.

5 Q What's the roof strength of the 2015 light duty Dodge

6 Ram?

7 A 2.97.

8 Q On the Brian Herbst scale, does that meet his safe roof

9 test?

10 A It does not.

11 Q What's the strength to weight ratio of the 2015 Nissan

12 Titan?

13 A 3.56.

14 Q Does that meet Brian Herbst's safe roof evaluation?

15 A It does not.

16 Q What's the strength to weight ratio of the 2015 Toyota

17 Tundra?

18 A 3.94.

19 Q Does that meet Brian Herbst's definition of a safe roof?

20 A It does not.

21 Q Please pull up Exhibit 186.2, I believe this was admitted

22 a couple of days ago. Turn to page 1. Dr. Vogler, do

23 you know what this is?

24 A Yes.

25 Q What is this?

10:59:13AM 1

A This is a test that was conducted on the Ford F250 chassis cab, which essentially a regular cab design, a 2008 model year.

2

3

4

Q Zoom in to the top portion where it says 2008 Ford F250 chassis cab. Okay, if we turn to page 3 of this exhibit section 16 abstract, please call that out Jeff. Explain what the purpose of this test was Dr. Vogler.

5

6

7

8

A It indicates here that it was tested beyond the performance requirements of FMVSS 216 to obtain roof strength data related to this vehicle.

10

11

Q Mr. Lowery examined you about the strength of the roof of the F250 truck, right?

12

13

A Yes, he did.

14

15

Q He asked you questions about what the strength was before the FDA computer analysis of the roof in April of 1996, correct?

16

17

A Yes.

18

19

Q Let's turn to page 36 of this exhibit PX186.2. What is this Dr. Vogler?

20

21

A This is the FMVSS 216 platen and this is after it has been loaded. So the platen is still in contact with the roof.

22

23

Q To be clear Mr. Lowery went through the so called downgauges of the structure?

24

25

A Yes.



11:00:54AM 1 Q And he pointed out those are after the April 1996  
2 computer FDA analysis; is that right?  
3 A That's correct.  
4 Q Do you have an opinion Dr. Vogler as to what the effect  
5 of those changes would be on the roof as a system?  
6 A I would expect as an engineer that it would have minimal  
7 effect on the frame. And in fact it's born out by the  
8 results of this particular test.  
9 Q Page 16 of exhibit 186.2, can you zoom in on the section  
10 B test subparagraph one? Can you highlight that in  
11 yellow? Dr. Vogler, what does this test reflect the roof  
12 of the super duty truck to be?  
13 A It's 12,412 pounds and that's an actual production  
14 vehicle.  
15 Q And that's in 2008?  
16 A Correct.  
17 Q You can take that down Jeff. Can you please move to  
18 Defense Exhibit 551? And I believe it was admitted for  
19 illustrative purposes yesterday, but I want to move to  
20 admit it for submission to the jury without the marking  
21 on the page. Just the photographs of the test report of  
22 Brian Herbst's test. The photograph of Brian Herbst's  
23 vehicle. Both are at the bottom left-hand corner and on  
24 the right-hand side is of this exhibit, Defense Exhibit  
25 581 is offered.

11:02:35AM 1

MR. LOWREY: For illustrative purposes.

2

MR. MALEK: No. Yesterday it was illustrative.

3

We're removing the marking on the PowerPoint and just offering the exhibit.

4

5

MR. LOWREY: So it's just going to add the two photos, the reproduction of the tests page; is that it?

6

7

MR. MALEK: The cover page of Brian Herbst's report, the photo in his report, and the photo on the right.

8

9

MR. LOWREY: No objection, Your Honor.

10

11

THE COURT: What are we going to call that number?

551.

12

MR. MALEK: Defense Exhibit 551A.

13

THE COURT: All right, it's admitted.

14

BY MR. MALEK:

15

Q Dr. Vogler, you also were cross-examined by Mr. Lowery about the shape of the roof. And he had drawn some lines about what the windshield header might do; do you recall that?

16

17

A Yes.

18

19

Q Can you explain to the jury what you were talking about during that section of the cross-examination?

20

21

A Yes. My understanding of his questioning was that he was trying to talk about what would happen to the roof panel if you moved one side of it down. Would it necessarily cause a rising or a lowering of the roof panel.

22

23

11:03:51AM 1 Q Dr. Vogler, when this crash occurred, when the vehicle  
2 pitched over and hit the ground. How many hits did this  
3 roof sustain?  
4 A One.  
5 Q One hit?  
6 A Correct.  
7 Q What we see here in Defense Exhibit 551A is a roof --  
8 Well, let me ask you, you know about this test; correct?  
9 A Yes, I do.  
10 Q We talked it about yesterday, right? I will not belabor  
11 this point. How many hits did this roof encounter?  
12 A One.  
13 Q What's the position of the windshield header in terms of  
14 whether there's a V or whether there's additional  
15 deformation off the top. I'm bad about this. Please  
16 explain the condition of the windshield after this drop  
17 test?  
18 A This depicts what I was trying to describe that because  
19 those pillars are attached on the bottom and when they  
20 move it doesn't mean that you necessarily are going to  
21 get that tenting up or the recess value that he was  
22 trying to show on that that particular chart. And this  
23 is an example of a real-life vehicle that was dropped,  
24 that deformed the A-pillar on the far side, and you don't  
25 get that buckle happening or that bending up or bending

11:05:10AM 1

down.

2 Q Dr. Vogler, what force application needs to occur here in  
3 this test to create a difference in the windshield header  
4 such as a bend, or a V, or some shape like that?

5 A You have to have a lateral, a sideways component force,  
6 to cause that to result.

7 Q When you say sideways force you mean something like that  
8 or something like that?

9 A Exactly.

10 Q Did those occur in this crash?

11 A They did when the vehicle was turned up back on to its  
12 wheels, not during the crash itself.

13 Q Does that explain the deformation you see when the  
14 vehicle is inspected and after it was turned back over?

15 A Correct.

16 Q Let's go to Defense Exhibit 552, this was offered  
17 yesterday and it was admitted for illustrative purposes.  
18 Once again, Ford Motor Company moves to admit the  
19 exhibit. You will remove the extraneous verbiage on the  
20 slide just to show the FEA image below.

21 MR. LOWREY: Now, we are talking about work product  
22 created by an expert, not simply a photo. This is the  
23 probably the sort of thing that was edited by an expert  
24 throughout the trial so we object.

25 MR. MALEK: Let me establish some validation if I

11:06:31AM 1 may Your Honor.

2 BY MR. MALEK:

3 Q Dr. Vogler, what are we looking at? Whose work product

4 is this?

5 A This is Mr. Herbst.

6 Q Mr. Herbst did this?

7 A Yes, he did.

8 MR. MALEK: Ford offers the exhibit, Your Honor.

9 MR. LOWREY: May we offer the rest of Brian's

10 report?

11 THE COURT: Well, if we are going to start admitting

12 these illustrative-type exhibits in your redirect if they want

13 to admit the illustrative-type exhibits in their recross, then

14 I am going to allow that.

15 MR. MALEK: Your Honor, for the purposes of

16 expediency I will let it remain illustrative and take the

17 Court's directive.

18 THE COURT: Go ahead.

19 MR. MALEK: Thank you.

20 BY MR. MALEK:

21 Q Dr. Vogler, what are we looking at here?

22 A This is Mr. Herbst simulation of Mr. Buchner's accident

23 reconstruction. So it's meant to simulate this crash

24 with a production vehicle.

25 Q And in fact, what are we looking at? It's not a

11:07:27AM 1 photograph. It's not an image. It's a model, right?

2 A It is.

3 Q Can you explain what that is?

4 A Yes. It's a finite element model which means it is

5 dimensionally representative of the vehicle. And what

6 Mr. Herbst has over-layed is that wire frame that you see

7 there where he has points; that would be an undamaged

8 vehicle. So he is showing with these points where the

9 vehicle that he analyzed in the computer. So he took

10 this model and he oriented it in the direction of being

11 upside down and modeled this particular engagement with

12 the ground. And he looked at what happened to the roof

13 compared to where it was.

14 Q When you say he modeled it to represent this engagement

15 with the ground; what do you mean by this engagement with

16 the ground?

17 A This crash. It was Mr. Buchner's reconstruction.

18 Q Let me see if I can connect this up. Are you telling the

19 jury that Brian Herbst used a FEA model to simulate what

20 Brian Buchner reconstructed this crash to be?

21 A That's what Mr. Herbst indicated this was.

22 Q Once again, that means this particular roof, this FEA

23 model; how many contact with the ground did it have?

24 A The one.

25 Q What's the shape of the windshield header that I'm trying

11:08:57AM 1

to circle?

2 A It doesn't have the recess that it currently has today  
3 after being uprighted.

4 Q Thank you. I'd like to compare Defense Exhibit 16.12A  
5 with the images that Mr. Lowrey showed Dr. Vogler, which  
6 are PX583.5.

7 MR. LOWREY: No objection to these, Your Honor.

8 THE COURT: Have they already been admitted? I know  
9 we've seen them.

10 MR. MALEK: Yes.

11 THE COURT: All right, go ahead.

12 BY MR. MALEK:

13 Q Dr. Vogler, you were asked by Mr. Lowery about which  
14 truck you would rather be in if you were involved in a  
15 rollover crash?

16 A Yes.

17 Q He pointed out the production test vehicle in the middle  
18 photograph on the right in Plaintiffs' Exhibit 583.5?

19 A That is correct.

20 Q Does that fairly and accurately represent the crash  
21 vehicle we are here about today?

22 A It does not.

23 Q Can you point to us the occupant area of the crash  
24 vehicle we are here about today, certainly as it relates  
25 to the driver?

11:10:55AM 1 A Yes, this area here.

2 Q Also the photograph over here on the right 583.5 the

3 bottom one I just circled.

4 A Yes.

5 Q Do you see that?

6 A Yes.

7 Q What vehicle is that?

8 A That is his reinforce test vehicle so he put a roll cage

9 effectively inside the vehicle.

10 Q Do you know whether or not that test vehicle would comply

11 with the other FMVSS requirements that are required?

12 A It has never been evaluated for that. There are

13 certainly many other standards it would have to be tested

14 for before you could actually sell it in the U.S.

15 Q Do you know the test configurations that he employed when

16 doing these drop tests? When I say he I mean Mr. Herbst.

17 A Yes.

18 Q Can you please explain what the test conditions for those

19 drop tests were?

20 A He ran a total of three tests. We are looking at both of

21 those vehicles at the end of those three tests. The

22 first two tests he picked the vehicle up at the same

23 angle as the platen is on the 216 test. So that's a

24 25-degree roll sideways, a 5-degree patch. Then he

25 dropped it once. The he picked up the vehicle again. He



11:12:21AM 1 dropped it again on the same side. And then he picked up  
2 the vehicle again, but now he reoriented it to the  
3 opposite side and dropped it again. Each of those were  
4 from the distance of a foot.

5 Q And then the Ford test, explain that one please. Did he  
6 include crash test dummies in his vehicles?

7 A He did not.

8 Q Dr. Vogler, in virtually every case you've been in with  
9 Brian Herbst on the other side, can you give us --  
10 explain to the jury from a high level position -- what  
11 Brian Herbst's opinions have been?

12 A They are the same that they are in this case in that he  
13 looks for the presence of bends. He identifies those as  
14 structural failures. And he says that that's what makes  
15 the roof defective. He also looks at the strength to  
16 weight ratio of the vehicle. His requirement is that it  
17 has a strength to weight ration of 4.0. And then he has  
18 looked for other vehicles that have been in rollover  
19 crashes and presents those. When he sees the bends he  
20 says that it further supports his position of structural  
21 failures.

22 Q And can you explained to the jury what manufacturers he  
23 says in respect to other cases you've been in?

24 A The cases that I have been in it's included: Chrysler  
25 vehicles, Toyota vehicles, Nissan, Mitsubishi, and

11:14:03AM 1

Hyundai.

2 Q Will you please explain to the jury whether you believe  
3 there's anything odd, unusual, or out of the ordinary  
4 about the roof we are here about today?

5 A No. I found nothing unusual or unordinary.

6 Q Do you think this roof structure is a weak roof structure  
7 Dr. Vogler?

8 A I do not.

9 Q Can you think can you explain Dr. Vogler based upon your  
10 research in this area your view of the docket, whether or  
11 not the entire industry of auto manufacturers adopts the  
12 Brian Herbst philosophy of whether they agree with Ford  
13 Motor Company?

14 A I would say that the industry because of the analysis and  
15 tests that have been done share the same position that  
16 I've shared with you today; that there's no causal  
17 evidence that if you increase roof strength you're going  
18 to reduce the risk of injury to occupants in vehicles  
19 when they are in a rollover crash.

20 Q Is that based on the science, and the testing, and the  
21 analysis, and field work that's been performed?

22 A Exactly.

23 MR. MALEK: Thank you Dr. Vogler.

24 THE COURT: Recross.

25 MR. LOWREY: Briefly Your Honor.

11:15:24AM 1

RECROSS EXAMINATION

2 BY MR. LOWREY:

3 Q You say the automakers don't agree with Brian Herbst that  
4 a 4.0 SWR is necessary for safety; is that correct?

5 A Correct.

6 Q These are the automakers who would have to spend more  
7 money on vehicles if they had to meet a 4.0 standard,  
8 correct?

9 A It depends on what the particular timeframe is, yes.

10 Q Mr. Herbst is not alone in saying 4.0 makes for a good  
11 safe vehicle, correct?

12 A No. That's one of the criteria for the IIHS test.

13 Q And those insurers are not paid by Ford to them best of  
14 your knowledge, right?

15 A I'm sorry.

16 Q For their safety analyses those insurers are not paid by  
17 Ford, correct?

18 A I'm not certain what you mean by those insurers.

19 Q The insurers that sponsor the Insurance Institute for  
20 Highway Safety, those insurers are not paid by Ford to do  
21 those safety tests; correct?

22 A I don't know.

23 Q The SWRs on the 2015s we looked at together, all of those  
24 were higher than the NHTSA standard; correct?

25 A They are.

11:16:42AM 1 Q Doesn't that demonstrate that the NHTSA standard is the  
2 minimum that manufacture standard, correct?

3 A We talked about that. You have to at least meet those  
4 standards to sell the vehicle, yes.

5 Q Forget those vehicles for a moment. Let's look at Ford's  
6 own 2015 F150; that was over a five SWR, right?

7 A Again, I don't the exact number. If it is, yes, it's  
8 over five.

9 Q All things being equal, a heavier truck comes down harder  
10 than a light chuck, everything being controlled for?

11 A That's too complex to give you that answer. It depends  
12 on how it engages with the ground. It has the  
13 opportunity to transmit more forces during an impact.

14 Q A heavier vehicle has the opportunity to transfer more  
15 force than a lighter vehicle does in a rollover, correct?

16 A Yes. But, again, it depends on what's experienced in  
17 that crash.

18 Q The D186 exhibit, and we don't need to look at it, but do  
19 you remember the test of the 2008 F250 chassis cab?

20 A Yes.

21 Q Let's just assume for the sake of argument that the roof  
22 strength is 12,412 pounds?

23 A Yes.

24 Q That would not even be a two SWR on a F250, right?

25 A It depends on the weight of the F250.

11:18:19AM 1 Q Let's take Mr. Tandy's weight of 8,000 pounds?

2 A Okay.

3 Q Would not even be a two?

4 A It would not.

5 Q You know what IIHS would say about that?

6 A Again, it's below their rating.

7 Q PX255, this is the same production vehicle that we saw or

8 the same model vehicle that we saw in that picture that

9 Mr. Malek showed you with the thing pushing down on the

10 roof, right; this is a Ford F250?

11 A I'm not exactly certain what this vehicle --

12 Q Let me orient you. I'm sorry. I came at that too fast.

13 This is the 2009 Autoliv testing, Ford would say the side

14 canopy testing; are you with me now?

15 A Yes.

16 Q And so that's the same model vehicle in so far as roof

17 strength is concerned that we were looking at that platen

18 pushing down some of the roof.

19 A That's correct.

20 Q This is after an actual rollover?

21 A It's called a Dolly rollover test. Yes. That's not an

22 actual rollover from crash, but it's to simulate a

23 rollover event.

24 Q It's a deliberate rollover?

25 A Yes.

11:19:34AM 1 Q You can see the crash test dummy's hand coming out the  
2 passenger side window; do you see that?  
3 A That's the driver side.  
4 Q Correct. You see the driver's hand coming out the  
5 window, correct?  
6 A Yes.  
7 Q I don't need to be an engineer or a biomechanical  
8 engineer to know that that guy is in trouble do I?  
9 A Again, it's a very complex thing. You would need to know  
10 what injury metrics are experienced during this rollover  
11 test.  
12 Q Can we have PX 47.12A? Let's all look at it together.  
13 Any reason for you to dispute that this is a photo of  
14 what the truck looked like while it was still on its top  
15 at the accident scene?  
16 A It looks like one of the crash scene photos. Yes.  
17 Q Now 583.1, three photos. Let's look at all three at  
18 once. Can we show the image in Mr. Herbst's report that  
19 shows them stacked up together? Mr. Malek asked you  
20 about these during redirect examination. Do you remember  
21 the Brian Herbst vehicle and the drop test?  
22 A Nothing is on the screen.  
23 Q Sorry. It's not on the screen, but it will be. Let's  
24 leave that aside for a second. I want to just ask some  
25 questions. I want to make sure nothing got confused

11:21:46AM 1

during the redirect. You're not disputing that that middle photo is a production F250, correct?

2

3 A That is correct.

4 Q Your point was it doesn't resemble what the Mills' truck  
5 looked like after the accident, correct?

6 A That's correct. This is after his three tests.

7 Q I understand. I just want to be clear what you are and  
8 aren't saying about this. You're not disputing that the  
9 middle vehicle and the bottom vehicle were subjected to  
10 the exact same tests are you?

11 A That's correct.

12 Q So no cheating. At least there's no switching out the  
13 vehicle. There's no changing of the tests to the very  
14 best of your knowledge, right?

15 A That's correct.

16 Q You described Mr. Herbst improved vehicle -- we differ --  
17 but you called that as having a roll cage; is that the  
18 phrase you used in your testimony?

19 A Yes. He took steel tubing and he ran it inside the  
20 structural elements of the roof structure and then he  
21 filled them with foam as well.

22 Q So that the A-Pillar is hollow at points that allows  
23 still tubing to run down it; is that what you are saying?

24 A That's correct.

25 Q Do you have any basis to dispute the statement in his

11:23:05AM 1

report that you could not see the difference when they  
had finished their work? Any basis to dispute that?

3 A I understand that he has taken photographs putting the  
4 headliner back up there. So I think that's what he means  
5 is that he has replaced that material and trim panels  
6 that were on the vehicle.

7 Q If Mr. Herbst makes the claim that you couldn't tell the  
8 difference once he was finished, sitting in the vehicle  
9 and looking at the vehicle, you don't have any way to  
10 dispute that; correct?

11 A I didn't have the opportunity to sit in those vehicle  
12 before they were tested.

13 Q If he said that -- Well, let me ask you this. You're  
14 not testifying that taking a production F250 and making  
15 those modifications, you are not affirmatively saying  
16 that that would cause the vehicle to violate the motor  
17 vehicle safety standard are you?

18 A I'm saying it has never been evaluated.

19 Q Right. You don't know either way.

20 A I don't. But I am aware that he is rigidified it  
21 substantially. There are many different standards that  
22 you need to help the occupant absorb the energy. So you  
23 would really have to test to see if he would even pass  
24 any of those standards.

25 Q And Ford wouldn't have to put steel tubing down the roof



11:24:15AM 1 structure. It could simply make the roof structure, the  
2 A-pillar for example, stronger; right?  
3 A It's a complicated endeavor because you have to change  
4 material properties. You have to be able to stamp those  
5 parts, integrate them with the rest of the structure.  
6 Q All of which Ford did for the 2015 F150?  
7 A They ultimately were able to make the roof stronger, yes.  
8 Q All of which Ford did for the 2017 F250, correct?  
9 A That is correct.  
10 Q Just two years too late for the Mills, right?  
11 A They had to integrate it into that vehicle that was done  
12 in 2017.  
13 MR. LOWREY: Those are all of my questions Your  
14 Honor.  
15 THE COURT: Anything else Mr. Malek?  
16 MR. MALEK: No, Your Honor.  
17 THE COURT: Ma'am, you are excused. Okay ladies and  
18 gentlemen, I held you a little over the two hour limit. I  
19 appreciate your patience. We are going to take our 15 minute  
20 break at this time. Do not discuss the case. We will recess  
21 for 15 minutes.  
22 [15-MINUTE RECESS]  
23 Wednesday, February 12, 2025 11:37:21  
24 COURT SECURITY OFFICER: All rise, this Honorable  
25 Court is once again in session.

11:39:40AM 1 MR. PHILYAW: Before we begin I wanted to bring  
2 something to the Court's attention that I just discovered  
3 during the course of the last examination of Ms. Vogler. In  
4 the exhibit lists that were provided to the Court and  
5 submitted by the parties in the pretrial order that's ECF  
6 306-1, Ford's Exhibit list says Defense 186, exhibit number  
7 not produced. We have now seen two exhibits by Ford with that  
8 number and a decimal point afterward: Defense Exhibit 186.1,  
9 which was a 2003 F250 test; and Defense Exhibit 1869.2, which  
10 was a 2008 NHTSA test that was just submitted with Dr. Vogler.  
11 It's my understanding that these were not provided to us on  
12 Ford's hard drive with exhibits that were submitted to us  
13 prior to trial. And this was never listed on Ford's exhibit  
14 list, even an updated exhibit list that they sent to us on  
15 December 23rd.

16 THE COURT: Who wants to respond to that?

17 MR. MALEK: I will give it a shot Your Honor. I was  
18 not aware of that what Mr. Philyaw just raised. I do know as  
19 a matter of fact that these tests were produced in this  
20 litigation long ago. I believe they were on our hard drive of  
21 exhibits. We will look into it. I don't have that part of  
22 the answer.

23 THE COURT: Mr. Philyaw, are you contending that you  
24 all were unaware of these exhibits?

25 MR. PHILYAW: I believe that they were produced in

11:41:21AM 1 discovery, Your Honor, but they are not on Ford's exhibit  
2 list. Your Honor, I believe they were on the hard drive that  
3 they provided to us before trial.

4 THE COURT: Well, they should have been. I think  
5 the same would apply with you all production of exhibits.  
6 There was a mix up and they didn't all get timely identified  
7 as I recall. Tell me how you are prejudiced by them not being  
8 on the hard drive?

9 MR. PHILYAW: I think one distinguishing factor  
10 between that, Your Honor, is that Plaintiffs moved to amend  
11 the pretrial order prior to trial and no such motion has been  
12 made by Ford prior to the time that they used the exhibits  
13 here at trial.

14 THE COURT: What are you asking me to do other than  
15 slap their wrist and tell them not to do it? Are you asking  
16 for any relief?

17 MR. PHILYAW: At this point I'm not sure, Your  
18 Honor. I think we might want to confer amongst upon  
19 Plaintiffs' Counsel. If there are any other exhibits that are  
20 marked Defense Exhibit 186, that would certainly be --

21 THE COURT: Do you have any other exhibits Mr. Malek  
22 that have not been previously identified as potential trial  
23 exhibits?

24 MR. MALEK: I am not certain as I said Your Honor.  
25 I can't make a representation either way. I believe these

11:43:14AM 1 were within the hard drive and if they are not, they are not.  
2 They have been in possession of Plaintiff in this case and  
3 other cases.

4 THE COURT: I understand that but they would've  
5 relied upon what represented you were going to use at trial.  
6 So we don't know. Is there some systemic problem with these  
7 not getting on to the hard drive or is this just an isolated  
8 --

9 MR. MALEK: This is the first we've heard of it,  
10 Your Honor.

11 THE COURT: Your concern is that they are all  
12 somehow related to the number 186; what's that connection?

13 MR. PHILYAW: Your Honor, yes. On the pretrial  
14 order at Exhibit C, which is ECF 306-1, Ford's exhibit list  
15 says the number Defense Exhibit 186 exhibit number not used.  
16 And they have since marked two exhibits at trial with the  
17 Defense Exhibit 186 and then followed by a decimal point,  
18 which leads me to believe that they are using that number for  
19 these.

20 THE COURT: Additional exhibits. Do you have any  
21 more 186? Who is your next witness?

22 MR. BOORMAN: Roger Burnett.

23 THE COURT: Is Exhibit 186 going to be used with  
24 him?

25 MR. BOORMAN: No, sir.

11:44:35AM 1 THE COURT: All I can say going forward if you see  
2 an exhibit that you don't think they've identified for trial  
3 purposes, object, alert me to it; and I would think the relief  
4 at that point would be to ask me to exclude it.

5 MR. PHILYAW: Thank you, Your Honor.

6 MR. BUTLER: Your Honor, if we might confer over the  
7 next break about the relief issue. I would expect we would  
8 want to ask that those exhibits be stricken, but we have not  
9 asked for that yet. We want to talk about it first.

10 THE COURT: All right, we will address that.

11 Let me just mention one thing. I have never  
12 enforced what I consider to be arbitrary time limits on  
13 examinations of witnesses. Instead I've tried to let lawyers  
14 try their cases the way they deem they should try them and  
15 then if they being duplicating matters I've got ways to nudge  
16 them along. But if a cross-examination approaches double the  
17 time of a direct examination, I'm going to probably nudge you  
18 along. So we need to get targeted. There are some cases, but  
19 in my view it's the rare case where a cross-examination should  
20 take twice the amount of time as a direct examination. I'm  
21 not going to put arbitrary time limits, but let's move it  
22 along. With direct examinations also, obviously, the  
23 Defendant should have an opportunity to present their case,  
24 but a lot of this the jury knows as far as some basic  
25 foundational stuff that we really don't need to repeat. I

11:46:31AM 1 would just ask that all the examinations take those things  
2 into consideration so that we are not here until Easter.

3 Bring the jury down.

4 [JURY ENTERS COURTROOM]

5 THE COURT: The Defendant may call its next witness.

6 MR. BOORMAN: Ford calls Roger Burnett.

7 THE COURT: Come straight forward to where this lamp  
8 is around the flip-chart. All the way to the front. Stop  
9 right there for a moment, raise your right hand, and take the  
10 oath.

11 COURTROOM DEPUTY: Do you solemnly swear that your  
12 testimony in this case shall be the truth, the whole truth,  
13 and nothing but the truth so help you God?

14 THE WITNESS: Yes.

15 THE COURT: Have a seat. Once you get situated tell  
16 the jury your name and spell it for the court reporter.

17 THE WITNESS: My name is Roger Burnett,  
18 B-U-R-N-E-T-T.

19 ROGER BURNETT

20 Whereupon, witness having been duly sworn,  
21 testified as follows:

22 DIRECT EXAMINATION

23 BY MR. BUTLER:

24 Q Good morning Mr. Burnett.

25 A Good morning.

11:48:27AM 1

Q Where do you live?

2 A I live in Carrollton, Michigan; which is a small town  
3 about 30 miles outside of Detroit.

4 Q And where do you work?

5 A I work at a company called Design Research Engineering.

6 Q How long have you been there?

7 A I have been there two and a half years.

8 Q What is DRE?

9 A It's an engineering firm. We provide engineering  
10 consulting services. One of our major roles as a company  
11 is providing technical assistance to attorneys in time  
12 like these.

13 Q Where did you work before DRE?

14 A I worked for the Ford Motor Company.

15 Q How long did you work for Ford Motor Company?

16 A A little bit over 40 years I worked at Ford.

17 Q What year did you start?

18 A I started in 1992.

19 Q Where are you originally from?

20 A Originally grew up in mostly Virginia, but other places  
21 in the country. My father was in the military at the  
22 time.

23 Q Did you attend college?

24 A Yes. I went to college in Virginia. My bachelors degree  
25 is from Virginia Tech in mechanical engineering. Then I

11:49:46AM 1

have a masters degree following that in mechanical and aerospace engineering combined from the University of Virginia.

2  
3  
4 Q Has your professional career after you left college been focused on automate design?

5  
6 A Yes. My first job after finishing my masters degree was with the Ford Motor Company in 1992, which up until today I've been focused on automotive design.

7  
8  
9 Q Since 1992 when you started with Ford has it been mostly focused on restraint design?

10  
11 A Yes, it has.

12 Q When you first started at Ford was your goal to work in restraint design?

13  
14 A No. I actually the job in restraint systems as an opportunity to get my foot in the door. I was a young man at the time. My goal was to work on race teams. I spent the first six months at Ford trying to navigate my career towards racing. I got a job transfer into the advanced powertrain group, which was a step towards the racing programs.

15  
16  
17  
18  
19  
20  
21 In that six-month time frame I also got involved in my home department, the seats and restraints group, I got involved in crash testing and that kind of changed my direction. That world of crash testing vehicles caused me to make a U-turn and come back, move away from my

22  
23  
24  
25



11:51:16AM 1

initial goal which was racing.

2 Q Why do you find crash testing so interesting?

3 A I a young man coming into it really I never quite  
4 understood was how quickly things happen in a crash; and  
5 how the entire engineering of a crash event happens in a  
6 tenth of a second. And all of that work that goes into  
7 making those systems work, all of the testing, all comes  
8 down to an event that lasts a tenth of a second just a  
9 blink of an eye; and that was just very fascinating to  
10 me.

11 Q As a restraint engineer you need to design components of  
12 safety systems to be able to help people within that time  
13 frame?

14 A That's the whole goal of restraint systems is that small  
15 piece of time of how long a crash takes.

16 Q When you retired from Ford after 30 years what was your  
17 job title?

18 A When I retired my title was the technical leader of  
19 occupant protection and accident reconstruction of Ford.  
20 That's kind of a unique at Ford that meant I was  
21 technically routed, but as I did have the responsibility  
22 of being a supervisor of people I was a sort of  
23 supervisor of occupant safety and accident  
24 reconstruction.

25 Q As part of your role while you were still at Ford, did

11:52:49AM 1

you talk to juries like you're doing today?

2 A I have. This is not the first time I've been in court.

3 Q Do you help lawyers like me, and Missy, Charlie, Paul,  
4 and Harold understand technical issues involved in these  
5 cases?

6 A I have spent a lot of time trying to teach engineering to  
7 lawyers. I have more patience than the average engineer.  
8 It' can be a challenge.

9 Q Lawyer don't often think like engineers; has that been  
10 your experience?

11 A The two careers don't really have a lot of similarity.

12 Q When did you do your first deposition? We've heard about  
13 depositions in this case. When did you get your first  
14 one?

15 A The first time I gave a deposition was in 1998.

16 Q Over 30 years how many depositions have you given about?

17 A It's over 200 at least.

18 Q Over 30 years how many times have to come to trial?

19 A My best estimate is I've come to trial in a setting like  
20 this maybe 50 times in my career.

21 Q Has that testimony been on behalf of Ford?

22 A Yes. Trial testimony has all been on behalf of Ford. It  
23 was all during my time as a Ford employee.

24 Q The jury has heard a lot about LECs. Have you  
25 participated in calls with me, and Missy, and other Ford

11:54:16AM 1 lawyers and the experts in this case? Have you  
2 participated in those calls?

3 A Yes, I have.

4 Q When you work on cases is it common for lawyers like  
5 myself to want to know what your analysis is before we  
6 get to trial?

7 A There is a team of experts. Each of us has a different  
8 area of the crash we are investigating. Some of that  
9 needs to be given to other experts who need that  
10 information. So that's an opportunity for the experts to  
11 discuss our findings, ask questions of each other, and  
12 learn. From my role I can learn what the accident  
13 reconstructionist, what his initial findings are; how he  
14 thinks the vehicles moved. That's important for me when  
15 I'm trying to understand how the restraint system  
16 performed. But I'm not doing the entire work myself. I  
17 have to rely on the results of his work. And these  
18 meetings are an opportunity to share back and forth this  
19 information. The lawyers are there mainly as observers.

20 Q Would it surprise you to know that Mr. Buchner told this  
21 jury that he talked to the Plaintiffs lawyers before  
22 trial?

23 A I'm sure their team does something similar.

24 Q Would it surprise you to know that Mr. Buchner,  
25 Plaintiffs' accident reconstruction expert, told this

11:55:34AM 1

jury that he talked to Mr. Herbst their roof design  
expert prior to this trial?

2

3

A In a similar fashion they need to know what the other  
person's expertise is finding.

4

5

Q Over your career have you had any involvement in  
research?

6

7

A Yes. I've been involved in research pretty much my whole  
career.

8

9

Q Have you listed some of your research on your resume?

10

A Yes. I listed research that resulted in published  
findings on my resume.

11

12

Q Jeff, if we could have Mr. Burnett's resume; it's Defense  
Exhibit 212, and we move to admit that into evidence Your  
Honor.

13

14

THE COURT: Any objection to the resume?

15

16

MR. LOWREY: Yeah. Ford didn't let the jury look at  
it this.

17

18

THE COURT: The practice up to now has been that the  
CVs and resumes have not been admitted. You need to establish  
the qualifications through his testimony.

19

20

MR. BOORMAN: Understood Your Honor. My  
understanding is we can show the resumes it just doesn't go  
back, is that correct?

21

22

MR. LOWREY: That's not where we landed last week  
Your Honor.

23

11:56:48AM 1 THE COURT: Last week there were objections to the  
2 Plaintiffs doing that.

3 MR. BOORMAN: Okay, let's go to page 2.

4 BY MR. BOORMAN:

5 Q Mr. Burnett, is there a section in your resume called  
6 technical publications?

7 A Yes. This is where I list the research studies that have  
8 resulted in published findings.

9 Q It's a full page. Give me an estimate of how many of  
10 these technical publications are on this page?

11 A There's 24 on this page and there's a second page.

12 Q Can we go to the next page, please? Approximately how  
13 many are on the second page?

14 A Twelve on this page.

15 Q And in this roughly 25 or 26 numbers of publications, do  
16 those topics have anything to do with what you are here  
17 to talk about today?

18 A Your math is a little off, 36.

19 Q Well, my question stands. Do those 30 plus papers have  
20 anything to do with the topics you are going to talk  
21 about today with the jury?

22 A Most of this work is in the area of vehicle crash safety.  
23 Some of it is focused on restraint system performance.  
24 Some of it address rollover crashes. Yes, there's work  
25 in here that is relevant.

11:58:20AM 1 Q We know that you started off with some testing when you  
2 started in 1992. Throughout your career have you had  
3 involvement in crash testing?  
4 A Yes. Through my whole career at Ford, even today since  
5 I've left Ford I am involved in crash testing vehicles.  
6 Q Have you done whole vehicle crash test?  
7 A When I talk about a crash test I'm talking about a whole  
8 complete vehicle that's crashed into a barrier, a pole,  
9 another vehicle; it's a complete car.  
10 Q We will get into the types of testing in a little bit.  
11 As part of the development of vehicles will Ford actually  
12 build the full vehicles just to crash them?  
13 A Yes.  
14 Q How many tests have you been involved in at and Ford in  
15 which the design and performance of restraint systems has  
16 been tested?  
17 A It's in the thousands; it's too many to count.  
18 Q In addition to those that you have been involved with,  
19 how many additional restraint tests have you reviewed?  
20 A I have reviewed tens of thousands of tests over the  
21 years.  
22 Q Has Ford published its results about these tests that it  
23 has done of restraint systems?  
24 A Yes. Especially in the area of advanced engineering and  
25 advanced design Ford will publish findings. We looked at

11:59:44AM 1 my list of research that I've published; much of that was  
2 as a Ford employee so it's really Ford sharing the  
3 results of research.

4 Q Are you member of any professional organizations?

5 A I am.

6 Q The jury has heard from a few witnesses about the Society  
7 of Automotive Engineers; are you a member of that?

8 A I am.

9 Q Are you a member of an organization called of AAAM?

10 A I am.

11 Q What is AAAM?

12 A That's a similar group that provides a forum for sharing  
13 research findings. It's the Association for the  
14 Advancement of Automotive Medicine.

15 Q Have any of your papers been published by SAE or AAAM?

16 A Yes.

17 Q Before they publish those papers do they peer-review  
18 those papers?

19 A That's all of the paper I've listed that were published  
20 had gone through a peer review process. Yes.

21 Q Why?

22 A A peer-review process of a technical publication for  
23 findings of research is a process where others not  
24 involved in the research need to approve the process and  
25 the finding, and the method you came to your conclusions

12:00:50PM 1

before it's allowed to be published. It's sort of a  
check system.

2

3

MR. BOORMAN: Your Honor, we tender Mr. Burnett as  
an expert in vehicle design, restraint design and performance,  
and crash testing.

4

5

THE COURT: He may give opinion testimony in those  
areas.

6

7

BY MR. BOORMAN:

8

9

Q Let's start very broadly with the vehicle design. How  
many engineers does it take to design a vehicle like the  
F250?

10

11

12

A The design team for a vehicle like the F250 takes  
thousands of engineers.

13

14

Q The jury as heard at the very beginning of this case that  
it can take up to five years to design a vehicle. Why?

15

16

A It's a very complicated process to design a new vehicle.  
It's an iterative process of designing, testing,  
learning, changing designs.

17

18

19

Q Would it help for you to use a timeline so that you can  
explain a general overview of the design process?

20

21

A I can give you a little bit of abbreviated timeline of  
some of the process. Yes.

22

23

Q Your Honor, may Mr. Burnett step down?

24

25

THE COURT: Yes.

BY MR. BOORMAN:



12:02:16PM 1 Q Mr. Burnett, obviously five years is a long time. We  
2 don't want to go into the minute detail. Can you run us  
3 through what Ford's vehicle design process is?

4 A I will lay out a timeline that simplifies the process.  
5 There's a lot of complexities. The systems overlap at  
6 different parts in regard to different timing. What I'm  
7 going to layout in my experience is mainly the restraint  
8 systems. What our timing plan would look like in a  
9 typical vehicle.

10 When we start out in the very beginning of having to  
11 do a vehicle is the concept of what it's going to be. So  
12 a lot of the upfront work is done before the engineers  
13 get involved and it's called the preprogram work.  
14 Preprogram work is done by the marketing researchers,  
15 people who talk to customers, dealerships.

16 Q Is Ford trying to figure out what a customer wants so  
17 that they can decide whether the vehicle can serve that  
18 issue?

19 A Exactly. For a case like a pickup truck what the  
20 experience was with the past truck customers would like  
21 it to be better a lot of the work is done upfront to  
22 define what the new vehicle is going to be. That's what  
23 started out here. This timeline takes us to a point  
24 where that work is done. For a vehicle like the F250 a  
25 lot of things are determined that adjustment of what the

12:04:15PM 1 market needs. So things like it's going to have a  
2 four-wheel-drive option, diesel engines, work as  
3 different cab sizes, different bed sizes. It's going to  
4 be able to tow a certain amount. It's going to be able  
5 to haul a certain amount. All of that stuff goes into  
6 the marketing process. That takes us to the point called  
7 program initiation so it's called PI. That point in time  
8 is when it's handed over from the marketing and the  
9 planning to the engineering. That's when the engineering  
10 team is built. The engineering team starts to build what  
11 eventually will be thousands --

12 Q I'm sorry. How do you build an engineering team? You  
13 just start hiring new people?

14 A There are people within Ford coming off of other  
15 programs. There's a lot of timing that has to work out.  
16 There is also the suppliers that were brought in. So  
17 Ford doesn't design every single piece of the car. A lot  
18 of the pieces of the car are designed in conjunction  
19 with companies who have expertise. Seatbelts are an  
20 example of that. There are companies that have expertise  
21 on the design of seatbelt systems for the entire auto  
22 industry. Ford will involve their help when designing  
23 for that vehicle.

24 Q The jury has heard about Autoliv testing of side curtain  
25 airbags. Is Autoliv a supplier you use?

12:05:49PM 1 A Autoliv is one of the suppliers. They test services and  
2 they also supply components of vehicle.

3 MR. LOWREY: Your Honor, I object. We're talking  
4 about a lot of things that are not in Mr. Burnett's expert  
5 report. And we are also talking about a lot of things that  
6 don't have anything to do with the roof. We don't have a  
7 seatbelt claim in the case. Your Honor, it's up to you to  
8 move things along not me.

9 MR. BOORMAN: That's a bold objection coming from  
10 somebody that just had a two-hour cross. Your Honor, this is  
11 a vehicle design defect case. We would like to have some  
12 latitude to have Mr. Burnett walk through the vehicle design  
13 process.

14 THE COURT: I will let him do that, but let's get to  
15 the focus quickly.

16 MR. BOORMAN: Yes, Your Honor.

17 THE COURT: Go ahead.

18 THE WITNESS: To speed things up what I'm getting to  
19 is the process. The team of engineers work at the first to  
20 take these inputs and try to understand what the vehicle  
21 design is going to be. They have to come up with the first  
22 set of prototypes. The first set of things that you have to  
23 have the pieces to run test. But there's no plan to build  
24 this. It all has to be built at the facilities that are made  
25 to build prototypes. So that takes us from the initial part

12:07:18PM 1 of the program to another milestone where we have what we call  
2 mechanical prototypes. These are noisy unfinished vehicles.  
3 Some of these are built to crash. Some of these are built to  
4 test. Some of these are built to test suspensions. That's  
5 where we first started to get data with what it looks like and  
6 how closely it is from its goals back here. And it gives us  
7 information we can iterate and improve, adjust things, and get  
8 to the next stage --[indecipherable]-- which is another  
9 prototype phase that we call confirmation prototypes.

10 Q What would the CP stand for?

11 A These are confirmation prototypes. These parts are built  
12 not just to look like the final product. They are built  
13 in the manner that the final product will be built.  
14 Everything has to be built in the same way it will  
15 eventually be built. It may not be the same machine.

16 Q You're running out of paper. Is that the last?

17 A That will eventually take us to what we called the job  
18 one.

19 Q What is job one?

20 A That's the point here for program approval. And now all  
21 the testing is completed. The vehicle is done and it  
22 gets decided. It's ready to production. That takes some  
23 time and is now moving into the assembly plant, which is  
24 a big operation that takes a little bit of time to get  
25 the process up and running. They start to build cars

12:10:42PM 1 right here and we call that job one.

2 Job one is when you can build a car that can be  
3 sold. These are legal. They are fitted and good to go  
4 but they're not for sale. They have a lot of testing and  
5 that's what we call the validation cars; that group of  
6 cars is now the actual car. It's actually built on the  
7 assembly line. It could be sold. It's a finished car  
8 that meets all of our goals, but to make sure that this  
9 process right here we've taken, the design, and put it in  
10 to the assembly plant to make sure there's no  
11 manufacturing concerns that need to be adjusted.  
12 Finally, it takes us here where we can sell cars to the  
13 dealership and they go to the public be. This whole  
14 process is the process that can take three to five years.

15 Q Thank you Mr. Burnett. As part of this process do the  
16 federal motor vehicle safety standards come into play at  
17 all?

18 A The federal motor vehicle safety standards are the U.S.  
19 Governments requirements that are put upon a car to be  
20 sold in the United States and that's definitely a part of  
21 this process.

22 Q Those FMVSS standards are minimum; do you agree?

23 A No, I don't. The U.S. government standards are the most  
24 stringent in the world of all countries that have  
25 standards. If you meet the standards in the United

12:12:36PM 1 States to sell a car in the United States, you can sell  
2 that care anywhere with minor adjustments.  
3 Q Are there FMVSS standards related to restraints?  
4 A There are.  
5 Q What are the FMVSS standards related to restraints?  
6 A The standards number 208, 209, and 2010 relate to the  
7 restraint systems.  
8 Q What is the FMVSS cert file?  
9 A That's a document kept at Ford as a record of how it is  
10 the vehicle meets the federal standard. It can include  
11 testing, it can include measurements, but all of the data  
12 is kept in a file for posterity. We can look that up  
13 later.  
14 Q Let's just take 208. How big is the cert file for 208  
15 that we've produce in this case?  
16 A It is voluminous.  
17 Q Is it a hundred pages?  
18 A Hundreds of pages.  
19 Q Same thing for 209 and 2010?  
20 A Yes.  
21 Q Can you give the jury an overview of what FMVSS 208, 209,  
22 and 210 requires?  
23 MR. LOWREY: Same objection Your Honor. We are  
24 talking about seatbelts and not the roof.  
25 THE COURT: How is this relevant?

12:13:59PM 1 MR. BOORMAN: Your Honor, one of the things  
2 Mr. Burnett did is review the restraint performance so we are  
3 finishing up the foundation for the restraint performance. We  
4 are going to talk about how the restraints performed in this  
5 crash and how that relates to the biomechanical analysis.  
6 This has all been disclosed in his report and question in his  
7 deposition.

8 THE COURT: The evidence with regard to the  
9 restraints is relevant to how they moved during the crash.

10 MR. BOORMAN: It is.

11 THE COURT: Overruled. There is no claim here to  
12 make it clear that the restraint system failed, correct? The  
13 only alleged design defect is with regard to the roof not the  
14 restraint system.

15 MR. LOWREY: We are all about the roof.

16 MR. BOORMAN: When Mr. Burnett was first retained  
17 that wasn't the case; it is now.

18 MR. BUTLER: We object to that Your Honor. We  
19 shouldn't have to argue that in front of the jury. That  
20 statement is not correct.

21 THE COURT: All right.

22 BY MR. BOORMAN:

23 Q Was testing performed to confirm compliance with these  
24 standards?

25 A Yes.

12:15:21PM 1 Q Does the vehicle at issue in this case comply with those  
2 standards?  
3 A It does.  
4 Q In addition to FMVSS standards, does Ford have any  
5 internal standards?  
6 A Yes. The federal standards are only a small portion of  
7 the standards that are used to design a car.  
8 Q What are Ford's internal standards called?  
9 A We have a system that breaks the vehicle down into the  
10 systems within a vehicle, the mechanical systems. And a  
11 set of systems has something called a system design  
12 specification or we call it the SDS.  
13 Q Is there a SDS for seatbelts?  
14 A There is one that applies to seatbelts, yes.  
15 Q Defense Exhibit 303, please. Mr. Burnett, is this the  
16 SDS for seatbelts?  
17 A It is a page of it, yes.  
18 Q Can you tell how many pages there are in this?  
19 A I don't see where it tells me the total.  
20 Q Let me ask you this. Would it surprise you to know that  
21 this SDS standard is 1,208 pages?  
22 A It would not. It's a big document. It's got all the  
23 specifications that Ford applied to a belt system.  
24 Q The jury has heard a lot of questions about Ford  
25 executives. Did Ford executives have anything to do with



12:16:39PM 1 SDS standards for the restraints or anything else?

2 A No. These come from engineers.

3 Q You mentioned testing. What types of testing does Ford

4 do?

5 A A great deal of testing that Ford does. In my area of

6 restraint systems is ranges from full-scale crash testing

7 all the way down to testing the smallest component of the

8 restraint system.

9 Q If we could have Defense Exhibit 237.1, please? Mr.

10 Burnett, did Ford do a crash test related to end cap?

11 A Ford did many but this is one of them.

12 Q Are you familiar with the reconstruction in this case?

13 A I am.

14 Q Is this end cap severity similar to the crash in the

15 case?

16 A Yes, I selected this test as one that had a similar crash

17 energy as the first impact to the ground.

18 Q Your Honor, we move Exhibit 237.1, which is a video of

19 this test that Mr. Burnett just described. We would like

20 to show it to the jury.

21 MR. LOWREY: Your Honor, we're curious about the

22 foundation for this witness. Is this a test he witnessed or

23 -- and the relevance of it as well.

24 THE COURT: He say he relied upon it as an expert in

25 giving his opinions in this case. And that he's familiar with

12:18:06PM 1 it as one that Ford conducted; is that correct?

2 THE WITNESS: That's correct.

3 THE COURT: It's admitted.

4 BY MR. BOORMAN:

5 Q Go ahead and play it. Tell the jury what they are  
6 seeing.

7 A What you're going to see is a F250 crew cab  
8 four-wheel-drive, a very similar vehicle to the case  
9 vehicle; that's going to hit the immovable wall coming in  
10 at a speed of 35 miles an hour; that is among the most  
11 severe crash tests for front impacts that are run. It is  
12 a similar energy to the ground impact in this case.

13 Q Are there other cameras that filmed this same impact?

14 A Yes. There's cameras all around this vehicle. Mainly  
15 cameras are super slow motion cameras. I talk earlier  
16 about the tenth of a second that's critical. These  
17 cameras run the film or the video at very high speed. So  
18 when you play it back it's very slow motion. So we can  
19 take that tenth of a second and look at it a long time to  
20 see what exactly is happening in that tenth of a second.

21 What we're seeing happened very fast. We use these  
22 cameras to slow it down so we can see what's happening.

23 Q Defense Exhibit 237.2, which is a slow-motion camera that  
24 Mr. Burnett just described. We would like to play this  
25 for the jury and move this into evidence Your Honor.

12:19:53PM 1

THE COURT: What number?

2

MR. BOORMAN: 237.2.

3

4

THE COURT: Are you seeking to admit it just for illustrative purposes?

5

MR. BOORMAN: Yes, Your Honor.

6

THE COURT: It's admitted.

7

MR. BOORMAN: Go ahead and play it.

8

BY MR. BOORMAN:

9

Q Mr. Burnett, why do restraint engineers look at this

10

slow-motion?

11

A It is how we can capture how the crash test dummy is

12

interacting with the restraint system in an event you

13

can't see with the naked eye. You'd have to slow it down

14

to be able to see what's happening; how the occupant is

15

interacting with the seatbelt, the airbag, the steering

16

column, et cetera.

17

Q Does Ford just do frontal crash tests?

18

A No. This is just an example that I pulled out, but there

19

are side impacts. There are rear impacts. There are

20

rollover crashes. There is numerous types of crashes

21

that are run on a vehicle during the design phase.

22

Q Is this an example of a system-level test?

23

A Yes. This is what I would call the full vehicle test;

24

every part of the vehicle was there.

25

Q What is an example of a component level test?

12:21:10PM 1 A A component level test would be when you drill down and  
2 you're just testing a piece of the vehicle. There's a  
3 lot of those. We looked at the document that had all of  
4 the seatbelt specification. Some of those are just for  
5 the components of the vehicle, the pieces of it.  
6 Q Is there such a thing as a subcomponent level test?  
7 A When you are looking at a component like a seat or a  
8 seatbelt, that component of a vehicle is made up of a  
9 bunch of pieces itself; and those pieces are individually  
10 tested. For example, the seatbelt system has a buckle,  
11 and a retractor, and hardware that mounts it, the  
12 seatbelt webbing as part of it. So there's testing on  
13 that whole piece, but there is also testing on just the  
14 seatbelt webbing for example.  
15 Q Let's take what you were just describing to the jury and  
16 talk about this crash. Plaintiffs' expert Mr. Lewis  
17 talked about marks on the latch plates on both Mr. and  
18 Mrs. Mills. Would you agree that there were marks on the  
19 latch plate of both Mr. and Mrs. Mills?  
20 A Yes, there were. I saw them.  
21 Q Do you have a photo of the marks on Mrs. Mills' latch  
22 plate?  
23 A I do.  
24 Q Defense Exhibit 214, page 588. This is one of Mr.  
25 Burnett's own inspection photos. We would like to move

12:22:39PM 1

it into evidence and display it to the jury.

2

THE COURT: Which number?

3

MR. BOORMAN: Exhibit 214, page 588.

4

MR. LOWREY: No objection.

5

THE COURT: It's admitted.

6

BY MR. BOORMAN:

7

Q Orient us. What are the marks on the latch plate related to this crash?

8

9

A First off, this is the piece of your seatbelt that you plug into your buckle. The seatbelt webbing passes through that from your lap belt up to your shoulder belt. So this is contact with the seatbelt webbing as you wear it entering a crash. So I look at the surfaces of this pass through that contacted the seatbelt webbing. And what can happen in a high energy crash is the pressures and the motion of the seatbelt webbing can leave evidence behind on this part. This is a plastic coated metal part but the pressure is enough to soften that plastic. And the motion of the webbing can smear it or leave scratch marks behind it. That gives us an idea if it was loaded in a crash and maybe how it was loaded in a crash.

10

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Q You can touch the screen and circle. Just circle the area where you want the jury to see these scratches.

23

24

A So this is the area where the webbing passes through and the top part of this is where it's going to be in contact

25

12:24:21PM 1 with the seatbelt webbing as it's worn. So what I'm  
2 looking for is evidence of crash loading. And this is  
3 the zoomed out photo but you can see scratch marks all  
4 along here. That's evidence of the seatbelt webbing  
5 being loaded to a degree that it actually softened and  
6 left evidence behind on the plastic.

7 Q Can we just blow that area up that Mr. Burnett just  
8 identified? All right, it's a little bit fuzzy, but  
9 those are the scratches?

10 A Yes. It starts to get a little grainy here, but we're  
11 looking at these that look like scratches; it's really a  
12 drawing of webbing going over it. That's evidence that  
13 it was loaded in this crash.

14 Q Plaintiffs' expert Mr. Lewis told the jury that the marks  
15 on Mrs. Mills' latch plate proves that she was wearing  
16 her shoulder belt over her shoulder because of the angle of  
17 those scratches. Do you agree?

18 A No. You can't read that level of detail into how the  
19 belt was being used. I can't tell you that it was being  
20 used in the way that the shoulder belt and the lap belt  
21 both saw loading. The change in angle between the  
22 shoulder belt over the shoulder, the shoulder belt under  
23 the arm isn't going to be enough to be able to tell  
24 anything from this latch plate.

25 Q Has Mr. Lewis ever designed a restraint for any

12:25:55PM 1

manufacturer?

2 A He has not.

3 Q Has Mr. Lewis ever published a paper about the marks that  
4 are created on a latch plate when it is worn under the  
5 arm?

6 A I don't think so.

7 Q Have you ever published a paper on this issue?

8 A Yes. I did a study years ago on the forensic evidence  
9 left behind with using belts in different configurations  
10 to understand if the marks left behind like these scratch  
11 marks could tell me after the fact and in more detail.  
12 Those findings are -- I can't tell the difference between  
13 the shoulder belt properly worn and a shoulder belt under  
14 the arm by looking at angles of scratch marks.

15 Q Defense Exhibit 472, please. Mr. Burnett, is this the  
16 paper you just discussed?

17 A It is.

18 Q Your Honor, we'd like to display the first of this for  
19 illustrative purposes?

20 THE COURT: All right.

21 BY MR. BOORMAN:

22 Q So Mr. Burnett, in just a moment we will see your name is  
23 at the top; right? This is you.

24 A That's me.

25 Q What do you want the jury to know about this paper if

12:27:14PM 1

anything additional to what you just said?

2 A It's just some of the research that's done behind my  
3 conclusions that you can't tell. This angle is not  
4 enough difference to make a read of how you are wearing  
5 the seatbelt.

6 Q Was this paper peer-reviewed and published?

7 A It was.

8 Q Because the marks on the latch plate are inconclusive,  
9 are the marks made by the belt on the occupants  
10 important?

11 A As an engineer I'm looking at the evidence on the  
12 hardware of the vehicle. There are others that will look  
13 at the evidence that that loading is caused by  
14 interaction between that occupant and the belt system.  
15 There may be evidence left behind in an injury pattern to  
16 the occupant.

17 MR. LOWREY: Your Honor, this sounds like it's  
18 outside the area you qualified him to give testimony.

19 THE COURT: I think he's saying that he's not going  
20 to give testimony as far as the marks made on the person,  
21 correct; outside your area?

22 THE WITNESS: Exactly. That's correct.

23 MR. LOWREY: And so it shouldn't be described to the  
24 jury from this witness either.

25 THE COURT: Overruled. He can explain why he didn't



12:28:22PM 1 consider those.

2 BY MR. BOORMAN:

3 Q Mr. Burnett, are you aware of any radiology experts for  
4 either side of this case?

5 A Yes.

6 Q Who?

7 A Dr. Camacho.

8 Q Did Dr. Camacho show physical evidence on the bodies?

9 A Yes, he's the person who took a look at that level of  
10 evidence on the occupant rather than on the hardware.

11 Q Defense Exhibit 359A, page 12. This has already been  
12 shown to the jury Your Honor.

13 THE COURT: He's not qualified to testify about what  
14 the marks on the body demonstrate so I am not going to permit  
15 him to give that testimony. You would defer to these other  
16 persons for their expertise in those area, correct, sir.

17 THE WITNESS: For finding the marks, yes. How they  
18 are routed is really the belts.

19 THE COURT: All right, go ahead. If he's not going  
20 to testify about how they occurred then he can testify.

21 MR. BOORMAN: I'm going to wrap this up Your Honor.

22 THE COURT: All right.

23 BY MR. BOORMAN:

24 Q Mr. Burnett, these are the marks that Dr. Camacho found;  
25 right?

12:29:40PM 1 A These are Dr. Camacho's findings. Yes.

2 Q Is this a classic seatbelt sign underneath the arm?

3 A This is a routing underneath the arm.

4 Q If someone told the jury that the black box EDR in this

5 vehicle proves that Mrs. Mills was properly wearing her

6 shoulder belt over the shoulder; is that correct?

7 A No. The EDR records whether it's buckled or not and

8 that's it. So all we know from that is that it was

9 buckled and we know that anyway.

10 Q As a restraint expert you've been looking at seatbelts

11 for 30 years, do you rely upon physical evidence or what

12 witnesses who showed up to a chaotic scene say about the

13 seatbelt usage?

14 A My focus is on the physical evidence. I don't ignore the

15 scene evidence. A chaotic scene with people working off

16 of their memories you will often get two people who

17 remember things differently. And then you will get a

18 situation where memories can change over time. So I tend

19 to focus on the physical evidence; what I can find on the

20 hardware.

21 Q Mr. Burnett, did you review the performance of the

22 restraint system in this crash?

23 A I did.

24 Q As part of that review did you review the black box data?

25 A I did.

12:31:03PM 1 Q Defense Exhibit 13, page 5.

2 MR. BOORMAN: Your Honor, this is the EDR that's  
3 been shown a bunch of times, but I don't know that we formally  
4 offered the whole thing into evidence so we offered all of the  
5 EDR data in to evidence.

6 THE COURT: What's the number?

7 MR. BOORMAN: Thirteen.

8 THE COURT: Any objection?

9 MR. LOWREY: None, Your Honor.

10 THE COURT: It's admitted.

11 BY MR. BOORMAN:

12 Q If we could blow up this table because it's pretty small.  
13 I want to make a list of the restraint components that  
14 came into play in this crash. Get me started.

15 A This is the EDR crash recorder of what the actual vehicle  
16 did during crash in terms of the electronic restraint  
17 system. And from this portion of it we can see that it  
18 deployed front airbags, it deployed side curtain airbags,  
19 it deployed something we call a pretensioner.

20 Q Okay?

21 A It deployed a side airbag.

22 Q Is that a thorax bag?

23 A A thorax bag, correct.

24 Q We've already discussed that you reviewed and relied upon  
25 Mr. Tandy's accident reconstruction, correct?

12:33:13PM 1 A That's correct.

2 Q If we could have Defense Exhibit 47.17. This has already

3 been shown to jury with Mr. Tandy. Don't play it please

4 Jeff, we just need the -- In Mr. Tandy's reconstruction

5 the angle of the vehicle at this first ground impact.

6 Which of these looking at the EDR data, which of these

7 deployed during the first ground impact?

8 A This is recorded as a mainly frontal impact with the

9 ground. So the front impact devices are deployed at this

10 timeframe. We can look at the EDR timing and know that

11 for sure, but it deployed the front airbags, the

12 pretensioners, and the ground impact.

13 Q Mr. Burnett, I should have done this before. We all know

14 what a front airbag is; that's what comes out of the

15 driver's wheel or the front dash; is that right?

16 A That's right.

17 Q What is the side curtain airbag?

18 A The side curtain airbags are the airbags that come from

19 above the doors down and cover the window openings.

20 Q Why?

21 A Those offer side impact protection. They also offer

22 containment in a rollover where there is lateral forces.

23 Q What is a pretensioner?

24 A A pretensioner is a device within the seatbelt system and

25 in this truck it's within the seatbelt retractor that's

12:34:54PM 1 the spool that pulls the webbing in and out where you  
2 store your belt. It is the device that locks the webbing  
3 in an emergency. Inside that device is also something  
4 called a pretensioner. In the early moments of a frontal  
5 impact along with your front airbags deploying it can  
6 also deploy this device that tightens your seatbelt.

7 Q Why does it tighten your seatbelt?

8 A Two purposes really. It can remove a loose seatbelt if  
9 you have a puffy jacket or a belt that's not quite on you  
10 well; it can suck it up to your body. And it can provide  
11 a little bit of pre-load to the belt. This is really  
12 before the occupant has started to load the belt in a  
13 front impact; that little bit of pre-load just gives a  
14 little bit of more time for the occupant to ride down the  
15 restraint loads.

16 Q As you told the jury, this is all happening in a fraction  
17 of a second?

18 A Right.

19 Q What is the thorax airbag?

20 A That's airbag that comes out of your seat and captures  
21 your lower torso, mainly for side-impact.

22 Q Defense Exhibit 47.19, which is again, something that has  
23 also been shown to jury. I will represent to you that  
24 the jury heard from Mr. Tandy, this is the second frontal  
25 impact. Did any of these safety devices that deploy

12:36:22PM 1

after the second frontal impact?

2 A Yes. Somewhere in the process of going all the way over  
3 it sensed enough lateral loading that it deployed the  
4 side devices. Lateral meaning side to side in the  
5 vehicle; it deployed the canopies and the thorax bag.

6 Q You said canopy that's also the same thing as the side  
7 curtain?

8 A Right.

9 Q Those terms are used interchangeably?

10 A Right.

11 Q I've got a few other questions for you. What is webbing  
12 stretch?

13 A That's another feature of the restraint system that is  
14 engineered. The seatbelt webbing itself is built to have  
15 some elastic properties. And it is something that a  
16 restraint engineer can use to fine tune the performance  
17 of the system. That's a carefully engineered attribute  
18 of the seatbelt webbing is its stretch. That's a feature  
19 of the restraint system that's not deployed. It's always  
20 there. It's always part of the belt.

21 Q Do you have to have webbing in your seatbelts, but do you  
22 have to have webbing stretch?

23 A Do you mean by a federal standard?

24 Q Yes.

25 A No. No, that's an engineer fine-tuning it.

12:37:55PM 1

Q Why would Ford put that in?

2 A Exactly what I said. It's to help give the occupant more  
3 time, reducing those restraint loads, lowering the risk  
4 of injury.

5 Q What is also a load limiter?

6 A Load limiter is a mechanical device within the seatbelt  
7 retractor, the spool I just talked about. Once it's  
8 locked and a severe crash is happening and the loads on  
9 the occupant reach a threshold, it comes into play. It  
10 can mechanically bend metal to allow some play in the  
11 system, some cushioning in the system so that those loads  
12 that's mainly chest loads don't go past a set threshold.

13 Q How does Ford know about the threshold and why would they  
14 want to slow that down and reduced that load?

15 A That's the result of a lot of biomechanic's research over  
16 the years understanding what an occupant can withstand in  
17 a frontal impact.

18 Q Did webbing stretch or the load limiter come into play in  
19 this crash?

20 A Yes, they definitely came into play.

21 Q What is a seat anti-submarining ramps?

22 A Within the seat structure for frontal impacts in  
23 particular there is a hidden structure that you don't see  
24 every day in your car but is in the front of that seat  
25 underneath your thighs. There is a structure that's

12:39:31PM 1

designed to an occupant's pelvis as they try to move forward in the restraint system and provides some additional restraint through the pelvic structure. So that basically relieves some of the load across the lab. It spreads out and loads other areas of the body to try to reduce the risk of injury.

2  
3  
4  
5  
6  
7 Q Okay, would that have come into play in this crash?

8 A Yes, it would have.

9 Q What is that knee bolster?

10 A A knee bolster is another one of the passive components  
11 of the restraint system. It's the lower part of your  
12 instrument panel that is slopped away from you sort of  
13 parallel to the way your legs naturally are seated in a  
14 car while you are operating a car. That's meant to catch  
15 your knees as you move forward in a frontal impact. And,  
16 again, share some loading of that frontal impact  
17 restraint through your femurs and take it off of the  
18 belts to spread it out over as much part of the body as  
19 we can.

20 Q From your inspection did that come into play in this  
21 frontal impact?

22 A It did.

23 Q What is an energy absorbing steering column?

24 A That's the structures that the steering wheel is mounted  
25 to a steering column, which allows you to steer the car.



12:40:43PM 1

And it is supported by a structure that is energy absorbing if it is loaded forward. As an occupant is loading in the airbag, the airbag is mounted to the steering wheel; that whole apparatus is allowed to crush and bend forward for the same reason as a load limiter to keep loads from passing set thresholds. That helps reduce the loading through the airbag to the occupant.

8 Q From your inspection did that come into play?

9 A It did.

10 Q How so?

11 A If it is bent to its limit and that's why the steering column is now loose from the vehicle. It's laying down on the seat of the vehicle as we find the vehicle later.

14 Q And that would help reduce the forces when the driver Mrs. Mills loaded it?

16 A That's where those loads came from, from the driver. Yes.

18 Q Defense Exhibit 47.15, which is the top view of Mr. Tandy's reconstruction; it' has already been shown to the jury. Mr. Burnett, what is a seatbelt retractor?

21 A That's the device I've brought a couple of times here. It's the spool that has a number of functions. Its everyday function is to store the webbing and then let it put it on. Let you move around in the vehicle, but in the case of an emergency there are mechanical sensors

12:42:26PM 1

within it, mechanical sensors, that will lock the webbing. It won't come out. I think most people have been annoyed by that at times just operating their vehicle. It will sometimes be locked on you. If something happens and jostled your vehicle it sensed a load out of the ordinary.

2  
3  
4  
5  
6  
7 Q And why would that lock? Is that a safety device?

8 A Yes. That's what the load path for your seatbelt is going to be if you are in a crash.

9  
10 Q As you reviewed Mr. Tandy's reconstruction, do you have an opinion as to whether this retractor came into play in this crash?

11  
12  
13 A We definitely locked the belts. With the evidence of the load marks you can't have loading if you don't lock the retractor so it's definitely locking.

14  
15  
16 Q It has been argued to this jury that the government has to force Ford to improve the safety of its vehicles. As an engineer for Ford for 30 years do you agree?

17  
18  
19 A I don't.

20 Q Of these ten restraint safety system features, which of these are required by law?

21  
22 A The federal law requires we have front airbags. And it does require we have a seatbelt retractors so your number ten.

23  
24  
25 Q Any others?

12:43:52PM 1

A The others are not required.

2 Q So why would Ford put these in?

3 A To improve safety.

4 Q Do these safety features cost money for Ford to include  
5 in its vehicles?

6 A Yes, they do.

7 Q If you will look at Defense Exhibit 13, page 6. There's  
8 one other thing about the CDR I wanted to ask you. If we  
9 could blow up that table. What does ABS Tell-tale mean?

10 A ABS is the antilock braking system and what is recording  
11 is if it is active. This is the precrash data. This is  
12 the five seconds leading up to the impact so it's looking  
13 back upstream from where the impact occurred what was  
14 happening in the vehicle. And one of the things it can  
15 record is if the antilock brakes are active.

16 Q What does it say about the ABS Tell-tale?

17 A That's off.

18 Q You reviewed the data for this crash. Is there any this  
19 or any evidence that Mrs. Mills applied any braking for  
20 the five seconds before this crash including the three  
21 seconds that the vehicle was off the road?

22 A No. There's no breaking through the brake pedal.

23 Q It has been argued to this jury that if you go off the  
24 road with your vehicle, you should not use your brakes.  
25 Do you consider that to be dangerous advice?

12:45:25PM 1 MR. LOWREY: Your Honor, I don't think this the  
2 opinion that was disclosed. Nothing about that in his expert  
3 report.

4 MR. BOORMAN: Your Honor, he reviewed all of the  
5 restraint systems and he relied upon Mr. Tandy's accident  
6 reconstruction; it's certainly within his expertise and what  
7 he was disclosed upon; and he gave a report.

8 THE COURT: Overruled.

9 BY MR. BOORMAN:

10 Q Mr. Burnett, let me start again. If someone argued to  
11 this jury that if you go off-road you should not use your  
12 brakes, would you consider that to be dangerous advice?

13 A If you've gone fully off-road the best thing you can do  
14 is get rid of speed for whatever you may encounter. You  
15 definitely should be using your brakes.

16 Q And if someone were to use their brakes off-road, how  
17 does ABS help that driver?

18 A The antilock braking system is designed for loose gravel,  
19 grass, ice, snow what have you where there is low  
20 traction. It won't allow the wheels to lock up. It will  
21 keep the vehicle going the way you steer it and it will  
22 keep the vehicle controllable because it won't lock the  
23 brakes.

24 Q ABS in fractions of a second can lock different wheels;  
25 is that right?

12:46:50PM 1

A Right.

2 Q And it will keep the vehicle even off road from going out  
3 of control?

4 A It will keep the vehicle from sliding sideways, right.

5 Q Even with all the safeties features can people still get  
6 hurt when a vehicle goes airborne 82 feet and impacts the  
7 ground at about 50 miles an hour?

8 A That's a very severe crash. If all these features work  
9 to reduce risks, but something that severe it just can't  
10 eliminated.

11 MR. BOORMAN: Thank you Mr. Burnett. Thank you Your  
12 Honor.

13 THE COURT: Cross-examination.

14 CROSS EXAMINATION

15 BY MR. LOWREY:

16 Q Mr. Burnett, my name is Frank Lowrey. I am one of the  
17 lawyers representing the Mills family. I don't believe  
18 you and I have ever encountered each other. Is that also  
19 your recollection?

20 A I don't recognize you, no.

21 Q Fair enough. Did you say the word roof at all in your  
22 testimony?

23 A I don't think so.

24 Q Not even once? I didn't hear it. I'm just asking  
25 whether you did or not.

12:48:25PM 1 A I didn't keep track. I was not --[indecipherable]-- roof  
2 if that's your point.

3 Q You are a restraint engineer and not a roof engineer,  
4 fair?

5 A Correct.

6 Q You are not here to say the roof structure is safe,  
7 right?

8 A I've not analyzed the roof; that's not my area.

9 Q Let's talk about restraint systems. You have no opinion  
10 whether Debra Mills was properly wearing her seatbelt; is  
11 that correct?

12 A What I found is it was inconclusive. She was wearing the  
13 belt. The lap and the shoulder belt were both loaded.  
14 Whether the routing was over the shoulder or under the  
15 arm based on the seatbelt evidence alone I found it  
16 inconclusive.

17 Q So you are not here within your area of expertise to say  
18 she was or was not wearing a shoulder belt portion of the  
19 belt properly, is that correct?

20 A Based on my own findings that's correct. There are other  
21 people who looked at other info and will bring it  
22 together with my findings, but based on just the  
23 seatbelts I can't tell you. I don't think anyone can  
24 tell you if it's over the shoulder or under the arm.

25 Q Also with Herman Mills you found the evidence

12:49:33PM 1

inconclusive?

2 A Yes.

3 Q Do you know of any dispute in this case that Mr. Mills  
4 was wearing the belt over his shoulder, whether he was or  
5 was not?

6 A I think the findings of others have found that his belt  
7 was retractable over his shoulder.

8 Q So there were Georgia State Troopers on the accident  
9 scene; do you understand that, sir?

10 A Yes, I do.

11 Q And you've read the depositions of those scene witnesses?

12 A I have.

13 Q You don't have anything from the physical evidence to  
14 contradict the observation of the troopers that she was  
15 properly wearing the belt; is that correct?

16 MR. BOORMAN: Objection, Your Honor, that misstates  
17 the testimony, specifically of Trooper Sanchez.

18 MR. LOWREY: The jury will recall whatever that is.

19 THE COURT: Overruled.

20 BY MR. LOWREY:

21 Q Do you need the question again subject to the objection?

22 A Sure.

23 Q You don't have anything based on the physical evidence  
24 within your area of expertise to contradict the  
25 observation of the Georgia State Patrol Officers on the

12:50:33PM 1

scene?

2 A No. I'm not here to contradict anybody's memory. What I  
3 am here to tell you is what I found by looing at forensic  
4 evidence.

5 Q Which is inconclusive?

6 A That's right.

7 Q And you are aware are you not that the finding of proper  
8 belt wearing is something that's noted or not noted  
9 depending on the facts on an accident report; are you  
10 aware of that? Did you see that in the troopers  
11 deposition?

12 A I don't recall specifically what's in the Georgia  
13 Accident Report whether they have just on or off or if  
14 it's any detail.

15 Q Let's talk about latch plates. As you told the jury, if  
16 I'm the passenger that's the part that sticks in here  
17 down.

18 A That's the part you hold in your hand and plug into your  
19 buckle.

20 Q And you agree that in a forceful collision, you agree  
21 that the pressure softened the plastic and made scratch  
22 marks, correct?

23 A That's right.

24 Q But you say that scratch marks can't tell you or not tell  
25 you whether the belt was being worn properly, is that



12:51:45PM 1

your testimony?

2 A They can tell you more radical misuse than we are talking  
3 about. Another type of misuse we often look for is the  
4 belt all the way behind you and it will tell you if  
5 that's the case; and that's is not the case in this  
6 crash.

7 Q You're aware of industry literature indicating that if a  
8 belt is behind a passenger and the lap belt is over the  
9 passenger, that the scratch marks do not remain straight.  
10 They are pretty noticeably diagonal; do you agree with  
11 that?

12 A You usually get a swirl.

13 Q A swirl?

14 A A swirl where they start straight and go to an angle.

15 Q But an angle not straight, correct?

16 A What we are looking for is the directionality of these  
17 load marks, really nothing else.

18 Q You're aware that literature published by people from  
19 Exponent saying exactly that?

20 A Yes, there have been a number of people who have  
21 published forensic research on what these load marks can  
22 tell you.

23 Q Exponent is a company that tends to work for automakers,  
24 correct?

25 A They work for every industry. They do work for

12:52:57PM 1

automakers.

2 Q Including the Ford?

3 A Yes, they have.

4 Q And so we know that if the belt is behind the passenger  
5 we would expect to see distinctive marks that aren't dead  
6 on straight, correct?

7 A That's correct.

8 Q We know if it was over the passenger properly worn we  
9 would expect to see what?10 A When the belt is properly worn over a passenger, there  
11 are going to be straighter marks than the belt behind the  
12 back for example. That's where you can really use that  
13 forensic evidence to identify a difference, but the  
14 angularity you are going to see straight but not quite  
15 perfectly straight marks; that's what you typically see.  
16 But the body shape, how that occupant wears the belt;  
17 where the seat is adjusted; where the height adjustment  
18 on the D-Ring is adjusted can all affect the degree of  
19 that angle. And whether you put it under your arm can  
20 also affect the degree of that angle, but not so much  
21 that you can make a determination that this is caused by  
22 one of those.23 Q Let me make sure I understand. You've got the perfect  
24 case where everything is being worn properly and you  
25 expect those to be straight?

12:54:11PM 1 A They are never straight but straighter.

2 Q Straightish?

3 A Right.

4 Q Then we've got maybe the worst case where the passenger

5 has got the lap belt routed entirely behind them and you

6 can definitely see those marks, correct?

7 A Right.

8 Q Are you telling me for the middle instance where the belt

9 goes under the arm but still across the body there's not

10 any difference. You can't tell at all between that and a

11 properly worn belt?

12 A I'm telling you it can affect the angle, but there's so

13 many other things that can also affect the angle: body

14 shape, how D-ring is adjusted, how the seat is adjusted

15 can all affect that angle. And just putting it under

16 your arm does is not changing the angle very much; it's

17 within the range of changing the height adjuster on the

18 seatbelt system. So I can't conclude based on an angle

19 without doing testing that that is caused by one, or the

20 other, or a combination.

21 Q Let's change topics and talk about the reconstruction you

22 were briefly shown of Mr. Tandy; do you remember seeing a

23 photo of that?

24 A Right.

25 Q You testified there was a layered deployment of airbags

12:55:27PM 1

caused by lateral motion, side-to-side motions; is that  
correct?

2

3

A Right. That's somewhere between where the vehicle leave  
the ground and then flips upside.

4

5

Q Got it. So you weren't saying and I didn't hear you say  
that you can somehow know whether there was one frontal  
impact or two frontal impacts based on that lateral  
airbag, correct?

6

7

8

9

A No.

10

Q The timeline you testified about vehicle production and  
everything everybody has to do; do you remember that?

11

12

A Yes.

13

Q That was just general testimony about Ford vehicles. In  
other words that wasn't specific to the F250 as opposed  
to say the F150, right?

14

15

16

A Right. That's the same for modern vehicles.

17

Q While you were at Ford were you aware that the Ford F50  
went from one roof strength in 2009 --

18

19

THE COURT: You said F50?

20

MR. LOWREY: F150, I beg your pardon Your Honor.

21

The F150 gets a stronger roof in 2009, then again in 2011, and  
then again in 2015; are you aware of that?

22

23

MR. BOORMAN: Objection Your Honor, outside the  
scope of direct.

24

25

THE COURT: Overruled.

12:56:38PM 1 BY MR. LOWREY:

2 Q Are you aware of that fact?

3 A I don't know the details of the strength, but I think it

4 went up.

5 Q That sounds about right to you? Let's assume that the

6 roof strength went up three times '09, '11, 2015;

7 correct?

8 A Okay.

9 Q That's about a six-year span?

10 A The three different designs, yes.

11 Q And Ford was able to do that for the 150, correct?

12 A That's apparently correct.

13 Q But they didn't do anything to the roof design other than

14 the supplemental airbags in terms of roof strength. They

15 didn't do anything to the F250 from 1999 to 2016; is that

16 your understanding?

17 A I don't know the details of that design.

18 Q A different question then. You're not saying there's

19 some reason why Ford could move faster with the 150 than

20 with the 250 are you?

21 A No.

22 Q And the occupants of 250s are just as important to Ford

23 as the occupants of the 150s, right?

24 A That's correct.

25 Q You are familiar with that witness chair. I think you

12:57:48PM 1       said you testified hundreds of times either by deposition  
2       or trial, correct?

3   A    Yeah. I think I guesstimated about 50 times I've been  
4       out at trial in 30 years.

5   Q    I think you told us that was all trial testimony for  
6       Ford?

7   A    For Ford's companies, yes.

8   Q    And virtually all the depositions are for Ford maybe a  
9       few other automakers in there?

10  A    Since I've retired I've been able to work for other  
11       automakers, but in my time at Ford it would have been in  
12       my capacity as an engineer at Ford.

13  Q    How many Ford products are you working on right now?

14  A    Maybe ten.

15  Q    And you worked at DRE. And we know about DRE. Michelle  
16       Vogler testified this morning. Do you know what Ford  
17       paid DRE from the time you left Ford until now, just for  
18       your time?

19  A    I don't.

20  Q    Can we have Plaintiffs' Exhibit 745 starting at page 1?  
21       What we are looking at here is a court document. I don't  
22       know if you've seen it; that's what I want you to  
23       confirm. I will represent to you these are Ford's  
24       answers under oath to some interrogatory questions that  
25       the Plaintiff asked. You see the question number one:

12:59:36PM 1 Please state the total amount Ford has paid to Roger  
2 A. Burnett and that's you, right?  
3 A Yes.  
4 Q From 2014 to the present; do you see that?  
5 A I do.  
6 Q Let's take it to the next page. Down to the supplemental  
7 answer, please. This says pursuant to the court's ruling  
8 of June 20, 2024 which ordered Ford to provide the total  
9 amount paid to Ford's expert Roger Burnett.  
10 Ford responds that from January 1<sup>st</sup>, 2014, through  
11 June 27<sup>th</sup>, 2024, it paid \$853,000 to Design Research  
12 Engineering in connection with fees billed for Mr. Roger  
13 Burnett's time for Ford-related litigation activities; do  
14 you see that?  
15 A I do.  
16 Q Does that sound about right to you?  
17 A That's not just me. That's my team working on these Ford  
18 projects, but that could be right.  
19 Q It says Mr. Roger Burnett's time, right; that's you?  
20 A Well, that's not what it is.  
21 Q It will take your word. That's a fair estimate for  
22 Mr. Roger Burnett and his team --  
23 A Right.  
24 Q -- of how many?  
25 A It ebbs and flows but maybe five engineers.

1:00:53PM 1

Q Got it. Even though it says 2014 to 2024 that has all  
2 got to be after August of 2024 because that's the only  
3 period -- I'm sorry 2022 -- because that's the only  
4 period you were working with DRE; correct?

5 A That's right.

6 Q So the \$853,000 is just for one consultant and his team  
7 for just about a two and a half year period?

8 A That's right.

9 Q This actually runs through the summer of 2024. If you  
10 rolled that number forward to today it would be more?

11 A It's not going to be less.

12 Q It might be a million dollars, another \$167,000?

13 A Proportion it out it's about level.

14 Q DRE has an invoicing system that communicates directly  
15 and electronically with Ford, yes?

16 A I think so. I don't operate it.

17 Q But that's your understanding?

18 A It's all electronic.

19 Q Right. So Ford knows what DRE is doing for Ford and how  
20 much it costs, fair?

21 A We bill them. They have to pay our bills.

22 Q And they could tell us the total if they wanted to,  
23 right?

24 A I think so.

25 Q Your employment at Ford I want to ask about that a little



1:02:09PM 1 bit more. So you started in what year, sir? Remind me.  
2 A '92.  
3 Q By '97, '98 you had moved into something called design  
4 analysis engineering group or design analysis group?  
5 A Design analysis engineering, yes.  
6 Q Design analysis engineering?  
7 A Right.  
8 Q And that is you felt by 1998 you say?  
9 A Yes.  
10 Q You stayed there until you left Ford in August of 2022?  
11 A Right. I moved up within that department, but that basic  
12 department was still where I was.  
13 Q So that's about give or take 24 years you spent in that  
14 department, correct?  
15 A Yes, that's about right.  
16 Q Design analysis group at least at some points in time,  
17 it's within the automotive safety office at Ford; is that  
18 correct?  
19 A Correct.  
20 Q Sometimes it's separate. Sometimes it's within the  
21 automotive safety office.  
22 A You mean over history.  
23 Q Yes, over history.  
24 A Yes. It was part of the design group for a while, but  
25 towards the end of my career there it was part of the

1:03:07PM 1

automotive safety office.

2 Q And the design analysis group provided litigation support  
3 to Ford; is that right?

4 A We are engineers who were able to communicate with  
5 lawyers and lawyers appreciate that. So we provide  
6 technical assistance within that group to lawyers who  
7 need it.

8 Q It is an engineering litigation support group?

9 A Partially, yes.

10 Q Do you know Mr. Chris Eikey?

11 A Yes.

12 Q Worked with him?

13 A He was in my department, yes.

14 Q He was at the design analysis engineering group, correct?

15 A Correct.

16 Q Which provides litigation support?

17 A Same group.

18 Q Those are all of my questions.

19 THE COURT: Any redirect?

20 MR. BOORMAN: No, Your Honor.

21 THE COURT: All right, sir, you're excused.

22 Okay, ladies and gentlemen, you all are adjusting to  
23 these late lunches I guess. We're going to take a break now  
24 for lunch. It's about almost 1:10. Let's come back by 2:15.  
25 Do not discuss the case with any one else or let anybody

1:04:23PM 1 discuss it with you. Don't do any research or investigation  
2 on your own. Just enjoy your lunch. See you back at 2:15.

3 [LUNCH RECESS]

4 Wednesday, February 12, 2025 13:04:58

5 THE COURT: I just want to make sure we're on the  
6 same page with regard to CVs and resumes. My understanding  
7 has been that none of the CVs have been admitted but some have  
8 been used for illustrative purposes. Do the Plaintiffs agree  
9 with that?

10 MR. BUTLER: Ford it objected to --

11 THE COURT: I remember Ford objected when you all  
12 first tried to put one in and so we did what's good for the  
13 goose is good for the gander rule.

14 MS. WRIGHT: Your Honor, what happened is they  
15 wanted to admit it and we said, as long as we can do the same  
16 thing with ours that was fine. And Mr. Butler said, no. And  
17 so as a result I think they only showed it. But we offered to  
18 --

19 THE COURT: Right. I just want to make sure  
20 everybody agrees that none of them have been admitted because  
21 we've got a little conflict up here.

22 MR. BUTLER: We agree with that, Your Honor.

23 THE COURT: All right, none of them have been  
24 admitted. That's all I needed thank you.

25 [LUNCH RECESS]

1:06:01PM 1

Wednesday, February 12, 2025 14:11:30

2 COURT SECURITY OFFICER: All rise. This Honorable  
3 Court is once again in session.

4 THE COURT: Please be seated. Bring the jury down.

5 MR. LOWREY: Your Honor, I have one exhibit to  
6 tender.

7 THE COURT: Yes, sir.

8 MR. LOWREY: That we used with Mr. Burnett and I  
9 talked to Mr. Boorman about it. It's PX745. It's an  
10 interrogatory response. Mike and I discussed it will have to  
11 be redacted for extraneous material the same way you admitted  
12 the others.

13 THE COURT: P25?

14 MR. LOWREY: P745.

15 MR. BOORMAN: Your Honor, I know you ruled on these  
16 past. I apologize. I can't remember. I think we've objected  
17 that they are hearsay and the shouldn't go back but can be  
18 shown to the jury. I just don't remember what your ruling was.

19 THE COURT: I think you did make that objection. I  
20 ruled that they were admissions that could go back.

21 MR. BOORMAN: Understood.

22 MR. LOWREY: And that's admitted, Your Honor.

23 THE COURT: Yes, sir. Bring them down. I'm going  
24 to send the revised draft jury instructions and the charge  
25 conference here shortly. We made a few changes after our

2:15:56PM 1 conference last night. But this will be pretty much the final  
2 version person unless something comes up unexpectedly.

3 MR. BUTLER: Your Honor, how about the Court's final  
4 verdict form?

5 THE COURT: It's coming.

6 MR. BUTLER: Thank you, Your Honor.

7 THE COURT: It's greatly simplified given the  
8 warning is out of the case. It's pretty close to a general  
9 verdict. Anybody thinks there's reversible error in it that  
10 they have not previously objected to, let us know at the  
11 appropriate time. Reversible being the emphasized adjective.  
12 Did I admit a response to a requests for admission or not?

13 MR. LOWREY: You did. Your recollection is correct  
14 that you treated those as --

15 THE COURT: Was there something else?

16 MR. LOWREY: At one point you admitted an answer.  
17 Those are the types of --

18 THE COURT: Okay. So I have admitted an answer.

19 MR. LOWREY: The affirmative defense portion of the  
20 answer.

21 THE COURT: Right. We did it this morning.

22 Okay, ladies and gentlemen, welcome back. Before  
23 the Defendant calls its next witness I want to explain a  
24 couple of things to you just to make sure that you're not  
25 confused about it. Has there been instances during the trial

2:18:59PM 1 where you may have heard me admit into evidence an answer that  
2 a Defendant may have made in another case, or a response to a  
3 request for admission, or a response to interrogatories. They  
4 talked about that earlier today. I just want to briefly  
5 explain to you what those things are and why they have been  
6 admitted.

7 When someone is a party to a lawsuit, the parties  
8 can engage in pretrial investigation and discovery where they  
9 can find out the contentions of the other side. And part of  
10 that starts with the person that is being sued or the entity  
11 being sued filing an answer to the complaint when they respond  
12 to the allegations of the complaint. Their lawyers will file  
13 it on their behalf and they will state what their response is  
14 to the complaint. If they make a response in an answer that  
15 is relevant in another case, in other words, if it states a  
16 particular fact that the Defendants says in the answer, then  
17 that can be admitted in the other action in the other lawsuit  
18 as an admission by that party who made the answer.

19 Same thing for a request for admissions. If a party  
20 wants to get the other side to admit certain things they send  
21 out a document that says, we request that you admit these  
22 facts A, B, C, and D. Then that party either admits them, or  
23 they deny it, or they say they don't have enough information.  
24 If a party in another case admits a certain fact in that case  
25 and it's relevant in this case, the under circumstances that

2:20:53PM 1 admissions can be admitted in this case because it's something  
2 that that party admitted to in a previous case and it is  
3 relevant in this case.

4 And then interrogatories you can send out  
5 information to the other side that ask them certain questions  
6 about certain matters involved in the case. It may be tell us  
7 all of your witnesses. Tell us everybody that knows about  
8 this or that or tell us about this particular defense. And  
9 the other side will answer those interrogatories.

10 Interrogatories are just a fancy word for questions.  
11 Then there are questions to the other side. And they will  
12 respond and their representative will sign a verification that  
13 says this responses is true and correct. They will sign that  
14 under oath. If they do that in another case, a party does  
15 that, if somebody's being sued in that case that's also a  
16 party in this case; and that answer is relevant that can also  
17 be an admission by the party that can be admitted in this case  
18 for the facts that are admitted in the answer.

19 Now, I have admitted a few things like that and you  
20 will have those with you during your deliberations if you wish  
21 to look at them. It will be up to you to decide what they  
22 actually mean. In other words, the importance that you give  
23 to them and what they actually mean in the context of this  
24 case. But that's what those things are. I wanted you to have  
25 an understanding of that rather than these things just kind of

2:22:28PM 1 coming at you out of the blue without any explanation.

2 Call your next witness for the Defendant.

3 MS. WRIGHT: Thank you, Your Honor. We call Dr.  
4 Mark Sochor.

5 THE COURT: All right, Dr. Mark Sochor. Sir, come  
6 all the way up to the front by this lamp straight ahead. Stop  
7 right there for a moment, raise your right hand, and take the  
8 oath.

9 COURTROOM DEPUTY: Do you solemnly swear that your  
10 testimony in this case shall be the truth, the whole truth,  
11 and nothing but the truth so help you God?

12 THE WITNESS: I do.

13 THE COURT: Sir, please be seated. Once you get  
14 situated tell the jury your name and spell it for the court  
15 reporter.

16 THE WITNESS: Sure. My name is Mark Sochor,  
17 M-A-R-K, S-O-C-H-O-R.

18 THE COURT: All right, you may proceed.

19 MS. WRIGHT: Thank you, Your Honor.

20 MARK SOCHOR

21 Whereupon, witness having been duly sworn,

22 testified as follows:

23 DIRECT EXAMINATION

24 BY MS. WRIGHT:

25 Q Good afternoon Dr. Sochor.



2:23:37PM 1

A Good afternoon.

2 Q Could you please tell us where you are from?

3 A I'm from Charlottesville, Virginia.

4 Q What do you do for a living in Charlottesville?

5 A I work for the University of Virginia. I'm an emergency  
6 medicine physician, and also associate professor of  
7 engineering, and associate professor at the medical  
8 school.

9 Q In what kind of engineering are you an associate  
10 professor?

11 A I am an associate professor in the center for applied  
12 biomechanics, so in biomechanical engineering.

13 Q So you are both a medical doctor and a biomechanic, is  
14 that right?

15 A That's correct.

16 Q What are you going to focus your testimony on today?

17 A The injuries that Mr. and Mrs. Mills suffered in this  
18 motor vehicle crash.

19 Q Did you say Mr. and Mrs.?

20 A Yes.

21 Q In particular, in addition to their injuries are you also  
22 going to discuss the kinematics of the crash and their  
23 cause of death?

24 A Yes.

25 Q Are all of the opinions you are going to be expressing

2:24:36PM 1

here today to a reasonable degree of engineering and  
medical certainty?

2

3 A They are.

4 Q You are aware that the Plaintiffs' experts in this case  
5 have said that the roof did not contribute to the deaths  
6 of Mr. and Mrs. Mills; are you aware of that?

7 A Could you restate the question?

8 Q Are you aware that the experts for the Plaintiffs in this  
9 case have said that the roof caused or contributed to the  
10 death of Mr. and Mrs. Mills?

11 A I am.

12 Q Do you agree with that opinion?

13 A I do not.

14 Q Would you just briefly summarize what you are going to  
15 talk about today? Let's start with Mrs. Mills.

16 A Sure. For Mrs. Mills based on the radiology that we have  
17 and the autopsy that was performed, I am going to comment  
18 on the lack of fatal traumatic injury. Also I am going  
19 to comment based on the radiology and the autopsy, I am  
20 also going to comment on the lack of injuries from the  
21 roof and the injury pattern that's consistent with the  
22 frontal crash.

23 I'm also going to comment based on those same things  
24 and photographs, bodycam videos, medical records, the  
25 positional asphyxia and the fact that she didn't die from

2:25:54PM 1 the positional asphyxia. And I'm also going to comment  
2 on the accident reconstruction. The accident  
3 reconstruction would be the black box or the EDR data.  
4 The fact that the vehicle was going along for five  
5 seconds and there was no input, drives off the road; and  
6 comment on the reason that I think she died from cardiac  
7 causes.

8 Q Thank you. And with respect to Mr. Mills would you give  
9 a brief overview of your opinions there?

10 A Sure. Mr. Mills in terms of traumatic injuries I did  
11 look at the hospital radiology in his hospital course  
12 that didn't show that he had any fatal traumatic  
13 injuries, in fact, he was alive at the scene. I'm going  
14 to also give an opinion on his lack of injuries from the  
15 roof. And the fact that his injuries are consistent with  
16 a frontal crash. That's also based on his hospital  
17 records and those things. I'm going to comment on  
18 positional asphyxia for Mr. Mills as well and that's  
19 based on the scene photos, my inspection of the vehicle,  
20 bodycam footage, also in his hospital course. I am also  
21 going to comment on the accident reconstruction for  
22 Mr. Mills.

23 Q Thank you Dr. Sochor. Before we get into the substance  
24 of your opinions I'd like to go into your background a  
25 bit. In addition to being a medical doctor you said you

2:27:28PM 1

are also an engineer; is that correct?

2 A That's correct.

3 Q Tell us a little bit about your education.

4 A My education I have a engineering underground in  
5 mechanical engineering from Michigan State University.

6 And I have a master's in mechanical engineer with an  
7 emphasis in biomechanics from Wayne State University.

8 Q And you went to medical school?

9 A I did. I went to Wayne State University Medical School  
10 after I had worked for the Chrysler Corporation. After I  
11 got my undergrad in engineering I went and worked for the  
12 Chrysler Corporation for approximately six years as an  
13 occupant safety engineer. Then I went into medical  
14 school after that.

15 Q Does being both an engineer, and a medical doctor, and a  
16 biomechanic assist you in your opinions here today as  
17 opposed to if you just had one or the other?

18 A Yes. Because you want to take both into consideration.  
19 Obviously, the medical side of it and the injuries that  
20 are there; and then obviously the biomechanics or the  
21 engineering of how these injuries occurred.

22 Q You mentioned before you went to medical school you had  
23 some time with Chrysler. Could you tell us a little more  
24 about your background in the automotive industry?

25 A Sure. I did work for General Motors in the summers as a

2:28:53PM 1 summer intern; it would help pay my tuition for my  
2 college and I did that for three summers. Once I got out  
3 of my undergrad I then took a position with the Chrysler  
4 Corporation. And in that position with the Chrysler  
5 Corporation I was one of the young engineers at the  
6 Chrysler Institute of Engineering. What you did was the  
7 first two years of your employment with Chrysler, you  
8 rotated in all of the different vehicle disciplines:  
9 chassis, powertrain, interior, and you got your masters  
10 at the same time. So once I completed my master, which  
11 was two years in the biomechanics and I finished my  
12 rotation then you get to pick an area that you are  
13 interested in. And if that group will take you --  
14 Q What group did you want and did they take you?  
15 A Occupant safety.  
16 Q Why did you choose the occupant safety group?  
17 A Obviously, I had a big interest in the human body and  
18 injury and so the occupant safety group is the group that  
19 does all the: airbags, belts, knee blockers -- we call  
20 them lower instrument panel -- and the steering column,  
21 basically the safety of the occupant in the vehicle.  
22 Q While you were part of Chrysler's occupant safety group,  
23 did you get any involved in any crash or sled testing?  
24 A Yeah. My responsibilities were the Ram full-size pickup,  
25 we called it the T300 at the time; that was the platform

2:30:15PM 1

that it was. And I was also responsible for the B-van, which was that little van that had a hood on it that was about a foot long that they used to make before the minivans. And I would do full vehicle crash testing to evaluate components within those vehicles. And I would also do sled testing in addition to that.

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7 Q Does the fact that you had experience running crash tests and sled tests assist in your role as a biomechanic?

8  
9 A Absolutely.

10 Q How is that?

11 A Basically when you do crash testing you different components. You can see where the body is picking up the load. You can see how the body moves in a space. Sled testing is the same thing except instead of using a full vehicle, the entire time you just set the interior of the vehicle up on like a platform and then that platform is accelerated to simulate a car crash so you can swap out components really quick. And you can do a lot of testing of different designs in rapid fashion with a sled test.

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20 Q Dr. Sochor, you and I are really fast and while everyone appreciates that we are doing that I want to back up for a second. Mr. Burnett was in here and he went through all of the restraint occupant protection features that he was involved in on the F250; are you familiar with those?

21  
22  
23  
24  
25 A Yes.

2:31:32PM 1

Q I'm not going to go through those again. One of them  
2 though are the three airbags. The frontal airbag, the  
3 thorax, and the side curtain airbag. Are you familiar  
4 with those in the 250?

5 A I am very familiar with those.

6 Q Would you describe those as a pillow when they deployed?

7 A No. I would not describe those as a pillow as they  
8 deploy. They come out very fast. Usually the example I  
9 use is to blink your eye it takes 150 milliseconds to the  
10 your eye. Airbags are out in 20 to 30 milliseconds and  
11 they are deflated by 80 milliseconds. So this comes out  
12 quickly and then deflates quickly. How do you get  
13 something out that quick? You got to get it out quickly,  
14 right? So it comes out at a very high rate of speed. It  
15 is not anything like a pillow.

16 Q It's not a benign impact if you make contact with your  
17 airbag; is that fair to say?

18 A That's fair to say.

19 Q Now, after you time at Chrysler you eventually went to  
20 medical school; is that correct?

21 A I did.

22 Q And upon completion from medical school what did you do?

23 A Upon completion of medical school I took a residency in  
24 emergency medicine at the Detroit Medical Center.

25 Q And why did you choose emergency medicine?

2:32:42PM 1

A I chose emergency medicine because you get the story first, you get a lot of interesting patients, and I was interested in trauma obviously and the emergency room gets all the trauma initially also.

Q No, we heard Dr. Camacho describing internships and fellowship and all that after he completed his residence. Did you do something similar yourself when you completed your residence?

A I did. And so I completed my residence and since I had the engineering background I went to a group at the University of Michigan from there and I did a two year fellowship in injury, actually not in the Department of Emergency Medicine; it was actually in the Department of Surgery and I did that fellowship for two years.

After that two-year fellowship the National Highway Traffic Safety Administration had a call for fellows. You couldn't be fresh out of attending or just out of residency. You had to have gone two years of clinical work before you could apply for that. And I applied and they were gracious enough to give me a fellowship there and I did the National Highway Safety Traffic Admin fellowship for two years.

Q We've heard a lot about NHTSA or the National Highway Traffic Safety Administration during the last week and a half. Are you saying you actually were given a



2:34:01PM 1

fellowship by them after you received your medical  
degree?

2

3 A I was.

4 Q And what did you do during that two-year fellowship with  
5 NHTSA?

6 A The two year fellowship with NHTSA I was the medical  
7 fellow for one of their programs, which is the CIREN  
8 program; which is Crash Injury Research and Engineering  
9 Network that takes the doctors and the engineers and puts  
10 them together. So I would travel to NHTSA every month,  
11 spend a couple of days with them, and work on various  
12 projects in terms of either special crash investigations;  
13 which we call SCI or I would work on their CIREN  
14 database. While I was there over the two years we  
15 published a couple of papers together also.

16 Q Was this a competitive fellowship that you had received?

17 A It was. There were applicants for the fellowship. I had  
18 been part of my first fellowship I had been on a CIREN  
19 team at the University of Michigan so they kind of knew  
20 who I was. So I was lucky enough to get the fellowship.

21 Q You mentioned these databases. Exactly what were you  
22 doing?

23 A The databases take into account -- They wanted to know  
24 more about the medical side of the crashes. There is  
25 large databases that they looked at crashes, but these

2:35:13PM 1 databases didn't have all of the medical information in  
2 them. So they had created a new program, that CIREN  
3 program that I talked about that would get more medical  
4 information into the system including: CT scans, x-rays,  
5 everything that they were going to make. And then you  
6 could go back later as a researcher and look at all of  
7 those documents to see if could improve vehicle safety.  
8 So I was part of the group that was helping to get that  
9 data set up and running.

10 Q Dr. Sochor what do you do now? Where are you working  
11 now?

12 A Currently I work at the University of Virginia in  
13 Charlottesville, Virginia. I'm a practicing active  
14 emergency physician. I am also the medical director for  
15 the center for applied biomechanic; that's the  
16 engineering lab where we do a lot of our sled testing and  
17 I work there. I am also the operational medical director  
18 for the Lake Monticello volunteer rescue squad. So I am  
19 the head of an EMS squad also.

20 Q So you're an emergency room doctor. You teach medical  
21 students. You teach engineering students.

22 A Yes.

23 Q And you do research?

24 A Yes.

25 Q And you are the head of an EMS, is that right?

2:36:29PM 1

A Yes.

2 Q Are you also medical examiner by any chance?

3 A I am. I am also a medical examiner. I am a local  
4 medical examiner in Albemarle County, which is -- I am  
5 basically an extension of the medical examiner that's in  
6 Richmond. So there are four different offices in the  
7 State of Virginia and I happen to be with the Richmond  
8 office. So I am the eyes and ears of the medical  
9 examiners. So if there is a crime scene they will call  
10 me and I will go photograph it and then release the body  
11 to the police, or to the morgue, or wherever it's going;  
12 it usually the morgue. I also will go out to car crashes  
13 if they need us to. I've been to plane crashes also.  
14 Then I will also do manner and cause of death. So if a  
15 pedestrian was hit by a vehicle and they died they will  
16 have me go in and examine the body.

17 I do not do medical legal autopsies. I do not do  
18 the full autopsy is the local medical examiner. I do, do  
19 cause and manner of death. And you do that by taking  
20 certain fluids, observing all the injuries that are  
21 there. We take photographs that get turned into the  
22 state. We do the cause and manner of death on the death  
23 certificate.

24 Q Does being a practicing emergency room physician who  
25 treats live patients assist you in the work you are going

2:38:01PM 1

to be talking about today?

2

A Yeah. I'm at a level one trauma center so I do -- I'm working in the emergency room department's trauma day in and day out. So I see everything from elderly falls, to serious MVCs, to gunshot wounds.

6

Q MVCs?

7

A Motor vehicle crashes.

8

Q Are you trained then to consider recognition of patterns of injuries and things like that in your daily job?

9

10

A Absolutely. That's what medicine is all about.

11

Obviously, the biomechanics helps me with motor vehicle crash victims.

12

13

Q As a practicing emergency room physician, do you treat people who have had cardiac events?

14

15

A I do. I do a lot of cardiac events and cardiology so the first place that anybody that has a problem with their heart usually comes is to the emergency department. So while I'm working a shift in the emergency department I am constantly being given EKGs to interpret. I am constantly being asked if this person is having ST Elevation MI. I'm am constantly --

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22

Q A what?

23

A STEMI, a ST Elevation MI, a heart attack. Sorry, heart attack. In looking at those I have the responsibility of all my patients in terms of the EKGs. I have the

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25

2:39:21PM 1 responsibility of the three of us at a time so my  
2 section. Then I get a third of the EKGs that are coming  
3 through triage and any of the pre-hospital EKGs that come  
4 through. That's when somebody thinks they are having a  
5 heart attack and they have done an EKG. They will  
6 transmit it to me so I can interpret it and then decide  
7 if it is a heart attack or not.

8 Q Is it just patients who have heart attacks or are there  
9 other cardiac events you also do?

10 A Anybody that's hypotensive, anybody that has an atrial  
11 fibrillation, anybody that has a higher heart rate,  
12 anybody that has V-tach versus V-fib; these are just  
13 rhythms of the hear that aren't compatible with great  
14 pumping of the blood up to the head. And so any of those  
15 things I am responsible for, for my patients.

16 Q Do you have to be a cardiologist to treat a patient with  
17 a cardiac event in the ER?

18 A You do not have to be a cardiologist to treat patients.  
19 I had a patient the other day that was A-fib with a rapid  
20 ventricular rate. So the rate was too high, it was 200,  
21 and we gave Adenosine; it's a drug that will kind of  
22 recalibrate the heart, and bring it down, and put it into  
23 a sinus rhythm not in relation to a sinus rhythm. So we  
24 treat all kinds of dysrhythmias and things like that. We  
25 will make the decision on it if somebody is having a

2:40:41PM 1

heart attack or not. And we are the ones that actually make a call to the cardiologists to come down because they are upstairs, likely so, taking care of all the patients of the floor and all the patients that have had heart procedures.

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6 Q So you both diagnose and treat patients with cardiac events?

7  
8 A All the time, yes.

9 Q Do you sometimes evaluate them to determine what kind of tests need to be performed?

10  
11 A Absolutely, so there is different tests that you can get in the emergency department. And you can look at the heart and look at the coronaries for some of the CT scanning technology. We also use a lot of ultrasound the thing that they look at the baby's with and we look at their heart. We look at the way their heart moves and their wall moves to see if they have had a previous heart attack or they are struggling currently.

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19 Q If you had a patient that had a series of symptoms, and chest pains, and tachycardia, and palpitations and things like that but they had negative stress tests and negative EKGs; what would you do?

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22  
23 A If I had a patient like that I'd like to make it simple. There's the plumbing and there's the electrical in your heart, right? It's one of our organs that very unique

2:41:53PM 1 that way. So its got plumbing and that's all the  
2 arteries that feed the heart. It's also the heart  
3 chambers themselves and they pump the blood to the body,  
4 so that's the plumbing part of it.

5 You also have an electrical system in there that  
6 runs down through the heart and coordinates all the  
7 beating and everything else. So you can chase after the  
8 plumbing problems for a while, but you also have to  
9 consider the electrical problem. So a lot of times if I  
10 have patients come in and they continue to have negative  
11 tests for the plumbing problem. We don't think their  
12 coronary arteries are clogged or anything like that.  
13 Then you've got to go start to go after the electrical  
14 system and look a the electrical system. Usually that's  
15 what and electrophysiologist, which is a cardiologists  
16 that specializes in the electrical system.

17 Q Can we come back and talk about that later in your  
18 testimony?

19 A Yes.

20 Q Thank you. Do you have training and experience in  
21 determining how injuries happen and what kind of loads  
22 can cause those injuries?

23 A Yes. I've been studying injury my entire career and  
24 obviously I have an interest in it early on when I was in  
25 my undergrad years. I've had the privilege of being the

2:43:04PM 1 chair of the abbreviated injury scale and so that's the  
2 AIS that you guys have probably heard mentioned.

3 We have different levels of the abbreviated injury  
4 scale; that's a scale that runs from one to six. We look  
5 at all the injuries in somebody. The way I explained  
6 that is back in the 60s and 70s they realized when  
7 you put the seatbelts in, and this is before airbags and  
8 all that, they were like; how do we know if these  
9 interventions are good? Right. If I put an airbag in a  
10 car who will I know that it's actually saving lives? So  
11 you would have two emergency docs side-by-side. One  
12 would say my guy fell five stories off a roof. He hit the  
13 awning on the way down and he is so much more hurt than  
14 your person that was in your motor vehicle crash. So  
15 this scale has kind of leveled the playing field. Based  
16 on the injuries on the person not the event leading up to  
17 it or anything like that. So you could compare the  
18 different victims of trauma.

19 The other thing that it does is the American College  
20 of Surgeons committee on trauma, that's how they  
21 designate trauma centers. I said I worked at a level one  
22 trauma center. To work at a level one trauma center you  
23 have to take care of sick trauma patients and the way  
24 they determine that is they use the AIS and they use  
25 something called the injury severity score. They say you



2:44:28PM 1 need to take care of 1200 patients that have an injury  
2 severity score of a certain level, which happens to be 15  
3 per year to even be considered. Because we wouldn't  
4 consider you unless you are taking care of enough  
5 traumatic patients.

6 Q If Mr. Mills had come to your emergency room following  
7 this accident, is that the kind of patient you would have  
8 treated in the emergency room initially?

9 A Yes.

10 Q Do you have training and experience in way individuals  
11 who receive injuries inside and outside of vehicles?  
12 Have you done research in this area?

13 A I have. I have over 75 publications in medical  
14 literature. These are peer-reviewed publications so  
15 physicians or engineers with a biomechanical background  
16 or if was -- I have some cardiac papers also that I've  
17 published. They look at your paper, review it. We give  
18 you comments back and then we will decide if it's worthy  
19 to be published or not. I also have a lot of other book  
20 chapters and other things that I have done to study  
21 injury. I've lectured nationally and internationally on  
22 biomechanics and I have also been on the board of the  
23 American Trauma Society. And I sit on several other  
24 boards that look at injury overall on a national and  
25 international perspective.

2:45:50PM 1

Q Dr. Sochor, you mentioned you are a local medical examiner; do you do any other work for the Commonwealth of Virginia?

2  
3  
4 A I am on the DMV Medical Board.

5 Q What is the DMV?

6 A Department of Motor Vehicles. In Virginia they have a  
7 medical board as many states do and I sit on the medical  
8 board as the emergency medicine representative. What  
9 this medical board does is decides based on driver's  
10 health and medications that they take, can they  
11 appropriately control their vehicles on the roads. Let's  
12 say you had a blackout event, you went off the road, hit  
13 a guard rail, police come, file a report. They will send  
14 us a report that says Mr. Smith blacked out. He doesn't  
15 know why. We found him and at that point they will take  
16 away your license for six months. And then that  
17 individual has to get checked out and make sure that  
18 there is nothing structurally or nothing that needs to be  
19 done to get their license back. And then we also make  
20 decisions on reinstating licenses to drivers.

21 Q Thank you.

22 MS. WRIGHT: Your Honor, we would tender Dr. Sochor  
23 as an expert in emergency medicine, injury causation,  
24 biomechanic injury scaling, EMS medical command, and cause and  
25 manner of death.

2:47:11PM 1 THE COURT: He may give opinions in those areas.

2 MS. WRIGHT: Thank you.

3 BY MS. WRIGHT:

4 Q Dr. Sochor, have you formed your opinions in this case to  
5 a reasonable degree of medical and engineering  
6 biomechanical certainty?

7 A I have.

8 Q Have any of the lawyers in this case ever retained you  
9 before?

10 A They have.

11 Q Are you charging for your work in this case?

12 A I do charge for my work in this case.

13 Q What is your hourly rate?

14 A My hourly rate is \$650 an hour.

15 Q Is that standard in your field?

16 A It is.

17 Q You have two occupants in this case that you have to  
18 evaluate, correct?

19 A Correct.

20 Q So that's twice as much work minus the construction?

21 A Correct.

22 Q What are your total charges in this case today?

23 A Total charges today is about \$80,000.

24 Q What have you done to come to your opinions in this case?

25 A I have looked at the vehicle movement. I've looked at

2:47:59PM 1

the occupant kinematics and I've looked at the injury patterns.

2

3

Q Did you review any materials in particular?

4

A I did. I have reviewed the medical records. I reviewed the obviously the radiology. I did vehicle inspection of the F250. I looked at the bodycam videos. I looked at the dash cam videos, pictures from the scene, pictures from the wrecker company. Also I looked at the depositions of both of the experts, and witnesses, and obviously looked at the expert reports also.

10

11

Q Did you perform any surrogate work?

12

A I did. I performed some surrogate work in an exemplar F250 with a surrogate, yes.

13

14

Q Did you review any crash tests?

15

A I did. I reviewed a crash test. Usually when I get a case depending on the vehicle I will review crash tests that are available.

17

18

Q Did you already have experience with what a frontal crash tested 35-miles and hour rigid barrier looked like before you became in this case?

20

21

A I did. That's what I used to do at Chrysler as I did crash tests. At the time it was 30 miles an hour but the occupant was unbelted because the belt rates weren't high enough yet. So I had to do unbelted and when you asked me about airbags is when we had really, really aggressive

25

2:49:20PM 1

airbags.

2

Q You have also reviewed crash tests where the occupant is belted, correct?

3

4

A Absolutely. They went to 35 miles per hour with belt shortly after that.

5

6

Q Now, have you been involved with any LECs or legal engineering conferences with experts and lawyers for Ford in this case?

7

8

A I have.

9

Q What is the purpose of those LEC and what was your role?

10

11

A The purpose of a LEC is -- My understanding of it is it's a legal engineering conference and my role is to educate the lawyers on what the injuries were; and also how I think those injuries occurred; and also educate the other experts that are in my field of biomechanics on what the injuries were and how they occurred. And I in turn listen to the other experts and take into account their opinions of occupant vehicle movement and how the crash occurred.

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Q Mr. Burnett says he has got a lot of patience in terms of trying to train lawyers on those LECs. Do you also have patience?

20

21

22

A I have lots of patience.

23

24

Q Would you explain what your methodology is to come to your opinions in this case with regard to the opinions

25

2:50:39PM 1 you are going to give?

2 A Yes. My methodology is usually to look at the vehicle  
3 movement because the vehicle movement and whatever the  
4 vehicle interacts with is going to tell you where that  
5 occupant is moving in space. Then I look at the occupant  
6 kinematics so that means how the occupant is moving in  
7 the vehicle. Are they belted? Do they have airbags,  
8 things like that? Then I look at the injury patterns to  
9 determine where those injuries came from.

10 Q We are going to start with vehicle movement, which you  
11 said is the first thing you do. Defense Exhibit 51-139,  
12 and I will tell you Dr. Sochor the jury is probably tired  
13 of seeing the reconstruction. Just for the purpose of  
14 showing the basis of your opinions explain to us the  
15 reconstruction your relied upon in this case.

16 A Sure. This is the reconstruction by Tandy Engineering.  
17 As we know the F250 was going down the road. It failed  
18 to navigate a left-hand turn; went approximately 200 feet  
19 before it got to a driveway culvert. And obviously  
20 hitting culvert it launched itself going 80 feet in the  
21 air. This shows at the end of that initial, we call it,  
22 the ballistic phase when all four wheels go off the  
23 ground. And so as that vehicle comes down you've got the  
24 first impact, which was about 35 miles per hour, and it  
25 comes back up in the air, comes down again with a second

2:52:12PM 1 impact; which is less energy than the first impact. And  
2 I believe it was 12 to 15 in that range miles per hour.  
3 And then it comes up again and then lands on the roof.  
4 This is called a pitchover rollover event. These are  
5 fairly rare. Usually when you are in a rollover if you  
6 guys think about it, it's usually a vehicle loses control  
7 on the roadway and it rolls almost like a football. In  
8 this case, this is what we call a pitchover event so it's  
9 just the one pitchover.

10 Q I think they understand now that means end over end,  
11 correct?

12 A Yes, end over end.

13 Q I wan to go back for one moment. We have Mr. Tandy's  
14 diagram on the screen. And you can touch the screen.  
15 Circle the two impacts of the pitchover.

16 A Sure. This one here and this one here.

17 Q Then we have the pitchover at the end.

18 A And then the pitchover at the end is obviously here.

19 Q I just want to clarify one thing you said. Exhibit D31,  
20 which would be the GSP photos. You said Dr. Sochor  
21 something about not navigating a left-hand turn. I'm  
22 going to show you what has been marked as Defendant's  
23 Exhibit 3-1. This is a photograph from the Georgia State  
24 Patrol?

25 A Yes.

2:53:44PM 1

Q Is this a fairly straight stretch?

2 A Fairly straight stretch, yes.

3 Q When you said she failed to navigate a left-hand turn  
4 what did you mean?

5 A She was coming in and just kept going.

6 Q Has Mr. Tandy provided in assistance some animation to  
7 show how the occupants were moving in these impacts?

8 A Yes. I asked him to develop that for me so I could  
9 explain how the occupants moved in the vehicle.

10 Q They have already seen his animation. If we could please  
11 put up Defense Exhibit 4717, if you could walk us through  
12 what we are going to be seeing here please?

13 A This is the first impact. So this vehicle is coming in  
14 at about 34 degrees. Is it okay if I stand?

15 THE COURT: Yes.

16 THE WITNESS: So vehicle is coming in about  
17 34 degrees and it's going to have the bounce, but when the  
18 impact comes at 34 degrees you have got your occupants inside  
19 the vehicle and so ask you can see usually, if you have a  
20 frontal impact like this you are going to move straight  
21 forward. Even in this you are going to move straight forward.  
22 But since the cab is tilted you are going to see out of the  
23 video as you ghost away you can see that the occupants are  
24 moving in the vehicle. This comes into play because Mr. Mills  
25 when he's belted he actually gotten goes up into his belt and



2:55:24PM 1 he's got a big hematoma over his right shoulder. We don't  
2 usually see that bit of a bruising and collection of blood on  
3 somebody, but in this type of crash it makes perfect sense  
4 because he's coming over.

5 Mrs. Mills as you've been told we believe does have  
6 the belt over her shoulder. We think it's underneath her arm  
7 based on all the evidence we have. So she would just  
8 pitchover normally just like if you had a lab belt on but  
9 she's got this belt that up a little bit higher then she goes  
10 over.

11 So they are both going to move forward in this  
12 direction on this first hit. This is the big hit. This is  
13 the 35-mile per hour crash. It's a huge hit actually. And  
14 then the vehicle balances. You can see in this rendering it  
15 just shows them inside the vehicle and where they are moving  
16 in space.

17 Q And Exhibit 4719, what is this Dr. Sochor?

18 A That is after the initial hit. We have the second hit  
19 just before it comes off and it pitches over. So this is  
20 the second hit and it's going to go away. So your first  
21 hit -- You've got one shot with your airbags. They  
22 haven't developed airbags that redeploy that fast. So  
23 the first hit is going to take you let's say a hundred  
24 milliseconds to happen. And then when this happens very  
25 fast, another second goes by, and your airbags actually

2:56:45PM 1 deploy, deflate. So the airbags aren't there for them  
2 anymore.

3 So then Mr. and Mrs. Mills have a second hit they  
4 don't have the benefit of the airbag, but they do have  
5 the benefit of the belt still; that's why seatbelts are  
6 so great because they keep working even after you've had  
7 multiple crashes. But they no longer have the effect of  
8 the airbags at that point so you can get to the steering  
9 wheel or you can interact with other things.

10 Q Dr. Sochor, what you are saying is they are loading their  
11 belts in both impacts; is that right?

12 A Yes.

13 Q How would you compare the severity of the first to the  
14 second impact?

15 A In the first impact 35-mile per hour impact, that's  
16 better than 95 percent of the crashes that are out there  
17 is a 35-mile per hour impact and how physics goes into  
18 it. I know it doesn't sound like much when you go down  
19 your street all the time, but this is like the impact at  
20 35 miles an hour into like a bridge so that's just a ton  
21 of energy.

22 After the bounce, after it goes back up into the air  
23 and comes back down, you've lost a lot of energy. So  
24 there's so much kinetic energy, right? If I drop this we  
25 can figure out how much energy this is based on its mass,

2:58:07PM 1 velocity that it achieved. So when they hit the first  
2 time and deploy everything they dissipated some energy;  
3 it comes back up in the air, the dissipate some more  
4 energy, it comes back in the air and then it finally  
5 comes to rest, and you dissipate the rest of the energy.  
6 The second one is a matter of amount of energy that comes  
7 down and this is less than half of what the first one  
8 was.

9 Q I think you've described some of the occupant kinematics,  
10 but if you would perhaps discuss the combination of the  
11 occupant kinematics as they go into their belt? You've  
12 got Dr. Camacho's spine back with you.

13 A Yes, I do.

14 Q We are not going to do all of Dr. Camacho again and his  
15 description nor are we going to go through all of his  
16 radiological screens, but --

17 A Is it all right if I am right here?

18 THE COURT: Let her ask you a question, but, yes.

19 BY MS. WRIGHT:

20 Q Put in contexts what you're going to be telling the jury  
21 about the injuries and the movement within the vehicle.

22 A Right. So when you look at the body this is the  
23 posterior portion and this is the anterior portion of the  
24 body, the nose would be right here; and you're looking at  
25 the spinous processes. I always get confused on them so

2:59:23PM 1 you've got seven cervical vertebrae, right? So this is  
2 one, two, three, four, five, six, seven and Mrs. Mills  
3 had broken off this little vertebrae right here. And  
4 then she also broke off T-1, which was right here. And  
5 the she also broke off T-3.

6 So in those crashes if you have your belt across  
7 here you can imagine that you can flex over, okay. When  
8 you flex over more and you've got a 10-pound weight at  
9 the end of this column which is your head, the spine is  
10 going to spread apart and it's going to try to pull  
11 apart. So we this a flexion distraction injury. And  
12 what happens is you've got little ligaments between all  
13 of these and the ligaments are pretty strong and actually  
14 strong enough in Mrs. Mills that she pulled off the edge.  
15 She pulled off the bottom part of this as she came  
16 flexing over.

17 I also took into consideration and said, okay, if a  
18 big huge object is coming in and let's say you are  
19 getting hit in the back with like a cinderblock or  
20 something; what does that fracture look like? It doesn't  
21 look like that. When you load these on their end it  
22 actually loads in to the pedicle. So you not only have a  
23 fracture here, you've got a bunch of pieces here, and you  
24 usually fracture your pedicle also. She doesn't have  
25 that.

3:00:53PM 1

Q What is a pedicle?

2 A A pedicle is a small little part that I'm showing on the  
3 spine.

4 Q Let me ask you this. Do Mr. and Mrs. Mills' age and  
5 medical condition come in to all with respect to the kind  
6 of fractures they can get?

7 A It does. An 18-year-old is a lot more robust in terms of  
8 trauma than somebody who is over 60 for example.

9 In Mrs. Mills we saw these fractures here. We also  
10 saw in Mrs. Mills here at T3 and T4 when she came over as  
11 you can see, you put these little elements in compression  
12 so almost like a pizza wedge. So she comes all the way  
13 over.

14 Mr. Mills didn't have any of these fractures. So  
15 Mr. Mills has his belt over his chest. And since he has  
16 got his belt over his chest, when he gets loaded he just  
17 does the vertebral bodies and these are the vertebral  
18 bodies. So he does a three and five on the last one.  
19 He's got one here. He's got a wedge fracture here. He's  
20 got a wedge fracture at five. And then he has got a  
21 wedge fracture at ten. And he has got a wedge fracture  
22 at 12. So the reason I am making a wedge fracture at 12  
23 is this is a fracture that we know is acute. When  
24 Dr. Camacho looked at the fractures up here he said these  
25 were indeterminate. When they see an indeterminate they

3:02:47PM 1 don't know when they happen, but this one was documented  
2 and he had some hemorrhage with it also.

3 When Mr. Mills is going and hits the first time he  
4 loaded into his belt. He was actually loading into that  
5 belt almost like a 35-degree angle. You and I are  
6 sitting in the car we load the belt this way. But he is  
7 going up into the belt. When he goes up into the belt he  
8 gives himself this compression load and that affects his  
9 vertebral bodies. But he's not getting a loaded from the  
10 back or the roof. He doesn't have any of the spinous  
11 processes fractures.

12 Q In evaluating the injuries and what happened, do you also  
13 consider the occupant space that was available?

14 A Yes.

15 Q Did you use the pictures from the accident scene or did  
16 you use the pictures after the vehicle was righted?

17 A I use the pictures from the accident scene.

18 Q Did you also use the bodycam video?

19 A I did. So we went back through and we looked at bodycam  
20 video and the scene. Obviously, as you right a video  
21 sometimes it can have more deformation to it.

22 Q Please pull up Defense Exhibit 16.12. If you could  
23 please move in? This is 12A. This one Dr. Sochor you  
24 can tell it has been lightened a little bit so you can  
25 see the interior of the vehicle?

3:04:31PM 1

A Yes.

2

Q Can we please move in to the occupant compartment? What observations did you make about the occupant compartment when you saw this?

3

4

5

A We see the occupant compartment. You can see that the window at the scene was intact. Somebody came and broke it out so you know that that door was straight up and down. And you guys probably heard about the A-Pillars and the B-Pillars. You can see the B-Pillar here is not that deformed. The B-Pillar is the pillar that's right next where the seat is. You can also look at the headrest. So if somebody tells me that somebody is being positionally asphyxiated and they are being squeezed in a car I am going to look at the seat and say okay, just physically in space. Anatomically where can they be? So I look at these scene photos and that tells me how much room was in that vehicle. So we have a seat with an upright headrest.

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Q Mr. Lewis took some photographs at his vehicle inspection and had some of those in his report; did you see those?

20

21

A I did.

22

23

Q Was he using those in his report to evaluate the occupant space?

24

A He was.

25

Q Please pull up Plaintiffs' Exhibit 654.60 and put it next

3:06:15PM 1 to 12A. Dr. Sochor, you've seen Mr. Lewis's photograph  
2 that he was using for his biomechanics review?

3 A Yes, I did.

4 Q Do you have any comments on it compared to the accident  
5 scene?

6 A Yeah. Obviously, when they righted the vehicle there was  
7 more deformation there. Obviously, looking at that seat  
8 and the way it's deformed than when it was taken at the  
9 scene before it had been moved there is obviously much  
10 more space.

11 Q Does a biomechanic rendering an opinion regarding injury  
12 causation and how the occupants did or did not sustain  
13 their injuries, which photographs would you use?

14 MR. PRATHER: Object to the form of the question,  
15 Your Honor. It's a very misleading question. The tow truck  
16 photos that are depicted on the left-hand side of the screen  
17 were not available to either party at the time any of the  
18 expert reports were made available in this. Completely  
19 misleading question.

20 THE COURT: I thought the question was as we sit  
21 here today which would you rely upon.

22 MS. WRIGHT: Correct.

23 THE COURT: Overruled.

24 BY MS. WRIGHT:

25 A I would rely on the left one. That's the one that was



3:07:27PM 1

from the scene.

2 Q Dr. Sochor, if you had originally relied on the one on  
3 the right and you then got the one on the left; what  
4 would you say?

5 A I would say I was using the wrong occupant space. I  
6 didn't have the right information when I was coming to my  
7 conclusion.

8 Q And if, in fact, that had happened what would you do in  
9 respect to the opinions that you had rendered?

10 A I would go back and reevaluate what my opinions were  
11 based on knowing that there was a change or I had to take  
12 something else into consideration.

13 Q Now, you mentioned that you did some circuit work in this  
14 case?

15 A Yes.

16 Q You've also reviewed Mr. Lewis's work, correct?

17 A I did.

18 Q Had you gotten your surrogate work before you report or  
19 was it before your deposition?

20 A It was before my deposition. I did not get my surrogate  
21 work done before my report.

22 Q Did you provide all of the information regarding your  
23 surrogate work in advance of your deposition?

24 A I did.

25 Q You said you evaluated Mr. Lewis's surrogate work,

3:08:28PM 1

correct?

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A Correct.

3

Q If we could please put back Defense Exhibit 323.46? What is this Dr. Sochor?

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A This is the surrogate work that Mr. Lewis had done and

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you can see here his surrogate. I believe she was

7

five feet two and a half inches. Mrs. Mills was 5'1".

8

This surrogate is going to be a little bit taller than

9

Mrs. Mills. You can see that the headrest is all the way

10

pushed forward, but in that picture you can see right at

11

the level of the headrest. So there is room there for

12

her.

13

Q If the headrest of this picture were upright would there be more room?

14

15

A There would be more room if it was upright, yes.

16

Q If you could then take that down and you did some

17

surrogate work of your own, correct?

18

A I did.

19

Q If we could put up Defense Exhibit 313.32? Is this your surrogate?

20

21

A This is my surrogate.

22

Q How tall was your surrogate?

23

A My surrogate was 5'3". So when you're doing surrogate

24

work if you're going to err it just seems fair and Mr.

25

Lewis did the same thing; that you err on being taller if

3:09:48PM 1

you are looking at clearances and things like that. We took the 5'3". We couldn't find somebody that was exactly 5'1" on the day.

2

3

4

Q The person on the jury over there who is 5'1"; would you have used her?

5

6

A Yes.

7

8

9

Q Again, when someone is about two inches taller and an inch and a half taller; what does that mean with respect to seated height?

10

11

12

13

14

A Right. For seated height a rule of thumb is you kind of cut that in half, right? So if you are 5'3" and you are going to simulate a 5'1" person you usually say you're probably an inch taller. You're not the two inches taller because obviously you are sitting down.

15

16

Q Now, you have a level on top of your surrogate's head; why did you do that?

17

18

19

20

21

A Because I thought it was below the plain of the seat and she is 5'3" so she was an inch taller than Mrs. Mills and I was, like, is she below that? So I just had us put a level on there and tape it so you could see that she was below that.

22

23

24

25

Q 313.43 zoom in on the level. That shows the headrest again. This is Defendant's Exhibit 313.43. Again, does that show that the headrest is above the top of the surrogate's head?

3:11:02PM 1

A Yes.

2 Q Go back to 313.32 for a moment and zoom in. Thank you.

3 We have 313.35 on the screen.

4 THE COURT: Are you doing this for illustrative  
5 purposes?

6 MS. WRIGHT: Your Honor, thank you. I thought we  
7 had already moved these in. If not --

8 THE COURT: The jury has not seen them.

9 MS. WRIGHT: Oh my gosh. Some of them had already  
10 been in. Let me backup. That's my fault. Mr. Gunn and I  
11 were not on the same page in terms of making sure I had said  
12 they had already been admitted.

13 MR. PRATHER: I haven't heard what the question is  
14 but if the question is just going to be repeating questions  
15 that have already been asked then we are going to object to  
16 that as asked and answered.

17 MS. WRIGHT: That's fine. I just want to be able to  
18 show with the photograph now up here because I made the error  
19 Mr. Prather and forgot to have the photograph put up on the  
20 screen as Dr. Sochor was explaining it.

21 BY MS. WRIGHT:

22 Q Dr. Sochor, you were talking a moment ago before I  
23 realized it wasn't on the screen. This is Mr. Lewis's  
24 surrogate photo?

25 A It is.

3:12:22PM 1

Q Could we scroll in on the top half of the surrogate,  
2 please? What were you describing?

3 A I was describing where -- Do you see how the headrest is  
4 tilted forward? Like, the headrest in the vehicle at the  
5 scene was straight up and down. So this is tilted a  
6 little bit forward, but even though it's titled a little  
7 bit forward it didn't take that much height away from it.  
8 And you can still see that your surrogate is at that  
9 plain.

10 The other thing in here is you can see how close she  
11 is to the steering wheel and so when it's a chaotic  
12 environment; the vehicle is upside down; people are hurt  
13 inside and people are on the scene. Just anatomically  
14 when I looked at it and they described them as doubled  
15 over and things like that, especially, for Mrs. Mills I'm  
16 like -- If the steering wheel is hitting her on her  
17 thighs let's say a third up, how can she get bent in  
18 half? She would be on top of the steering wheel. The  
19 steering wheel is in the way. She would have actually  
20 physically have to go through that steering wheel to be  
21 bent in half. There is no room there to bend her in  
22 half. And if she is bent in half she is on top of the  
23 wheel and nobody described that.

24 Q And the steering column?

25 A And the steering column. Correct.

3:13:41PM 1 Q Please put back up Defense Exhibit 313.32, which was not  
2 admitted Your Honor. I would move for its admission.

3 THE COURT: What number is it?

4 MS. WRIGHT: 313.32.

5 THE COURT: It's admitted.

6 BY MS. WRIGHT:

7 Q Again Dr. Sochor, this is your surrogate photo?

8 A It is.

9 Q What does it show?

10 A Basically it shows I put in a little bit taller  
11 individual than Mrs. Mills, put them into the vehicle in  
12 position at the scene. Actually, their head is lower  
13 than the plain of the headrest that we saw in the scene  
14 photo.

15 Q And if we put up Defense Exhibit 313.35. Your Honor, I'd  
16 also move for the admission of this one, which I don't  
17 believe we've shown before.

18 THE COURT: It's admitted.

19 MS. WRIGHT: Thank you.

20 BY MS. WRIGHT:

21 Q Dr. Sochor, what was the point of this photograph?

22 A Just to show the plain. Kind of like when you are  
23 looking up at the thing you are like is her head above;  
24 is not above; and even if it is above is it above like a  
25 millimeter or something? So I would just say let's put a

3:14:47PM 1 level on there and see which way it's going. Is it going  
2 up or down and this just shows that it's going down. So  
3 hear head, when she is seated in a regular comfortable  
4 position, she's actually below the plain of the headrest.  
5 Q Did you also consider the amount of occupant space that  
6 Mr. Mills had when evaluating Mrs. Mills?  
7 A Yes. Mr. Mills, obviously he's a taller individual and  
8 he had less occupant space than she did. And in terms of  
9 the positional asphyxia and everything else, he did not  
10 have the positional asphyxia either.  
11 Q You mentioned you looked at injury patterns in light of  
12 the vehicle and the occupant kinematics. I want to start  
13 with Mrs. Mills for a minute all right?  
14 A Sure.  
15 Q Walk us through your evaluation of Mrs. Mills in this  
16 case?  
17 A Mrs. Mills is seatbelted. She has got the belt  
18 underneath her arm. We can see that from the radiology.  
19 You can see the bruising pattern that Dr. Camacho had  
20 shown you. In the first impact she comes over the top of  
21 the belt. Coming over the top of the belt she gets her  
22 lower rib fractures. So she had rib fractures. Actually  
23 up here they were real close to her cervical spine kind  
24 of where when she came over and she did the spinous  
25 processes and she had that big hit, and she goes into

3:16:24PM 1 flexion. She has some cracks right here and then she  
2 also has the spinous process fractures.

3 In loading the belt she comes over and she has got  
4 some rib fractures lower down. I believe on the left  
5 they were six through eight and on the right there was a  
6 seventh rib fracture. Also when you have the belt down  
7 that low on yourself you are more prone to liver  
8 injuries. So if you have that belt down low she loads  
9 her liver. Her liver is on the right side of her body  
10 and she loads that liver and she gets a liver injury  
11 also. And then she also and the two vertebral body  
12 fractures that were slight that we also saw.

13 Q Now, did you consider whether or not Mrs. Mills could  
14 have gotten those thoracic injuries from the roof?

15 A Right. She also had a sternal fractures so all of her  
16 fractures in her rib fractures are in a frontal pattern.  
17 So if I'm loading you from the back, your rib cage is  
18 kind of like a hoop like a heart, and this would be the  
19 back. This would be where your spine is and if you think  
20 about it your spine runs through the middle of the body  
21 so it can take all the load.

22 So when you look at that usually if you have  
23 something coming from the posterior you usually are  
24 breaking the ribs right there. Her ribs are broken on  
25 the anterior lateral part. So as you load the rib cage



3:17:54PM 1 and it's all connected together, it's all one structure,  
2 you tend to fracture the ribs on out on the outsides when  
3 you load it. But you also can see sternal fractures also  
4 because the sternum is keeping everything together, and  
5 then you have some cartilage, and then you have the bone  
6 again. You can see some injuries to the sternum on a  
7 frontal impact. Again, if the roof is coming in and  
8 loading it from the back why is she getting all these  
9 injuries on the front?

10 Q Did you consider Dr. Camacho's radiological findings?

11 A I did.

12 Q Real quickly I want you to identify for the jury some of  
13 them you relied upon. If we could put up DX 359A, page  
14 16. These, Your Honor, admitted for illustrative  
15 purposes during Dr. Camacho's testimony.

16 What is this just briefly?

17 A This is what I was showing you guys on the spine. This  
18 is seven and you can see the process fractures. We're  
19 looking at the side of the individual. So you are  
20 looking at their side and you're taking a slice right  
21 down through here. You can see on the red arrows that  
22 those with the spinous process fractures that I talked  
23 about that came off, right? And then at the blue arrow  
24 you can see T3, T4; it's really subtle. You guys aren't  
25 radiologists, obviously. It's tough to see but those are

3:19:19PM 1 where the wedges are. If you look at the T2 vertebral  
2 body and then you look at T3 you can kind of see there  
3 that is compressed down. T4 is even more compressed  
4 down. And then if you look underneath the T4 to the next  
5 little square down there you can see that it's a little  
6 bit bigger. So these appear to have been we call those  
7 wedge fractures.

8 Q An example of Dr. Camacho's findings for ribs 359A, page  
9 21. Briefly just remind the jury what you considered?

10 A The bottom of this image is your back, okay. And then  
11 when you are looking at a CT scan you are at the foot of  
12 the patient and they are slicing the patient in front of  
13 you this way. So it's always confusing. Right is left  
14 and left is right. So that's why on the right it looks  
15 like the right side. There's the left eighth rib  
16 fracture. If you look below that little white wispy line  
17 here --

18 MR. PRATHER: Your Honor, I'm going to object.  
19 Dr. Sochor has not been qualified as an expert in radiology,  
20 CT scans, and MRI scans. As Ford's lawyers have mentioned  
21 over and over Dr. Camacho was the only radiologist in the  
22 case. So we object to Dr. Sochor going into great detail  
23 about these radiological --

24 THE COURT: Sustained. He wasn't qualified as a  
25 radiology expert.

3:20:51PM 1

MS. WRIGHT: I didn't mean him to be as a  
2 radiologist.

3 BY MS. WRIGHT:

4 Q Dr. Sochor, do you look at x-rays in the ER?

5 A Right. I look at x-rays as a biomechanic. I look at  
6 x-rays in the ER and make decisions based on x-rays in  
7 the ER all the time. So I read images. I do not read  
8 MRIs; that is for Dr. Camacho to do.

9 Q Did you also have discussions with Dr. Camacho about his  
10 findings?

11 A Absolutely. And I have also written papers on rib  
12 fracture patterns and have gone through thousands of  
13 chest x-rays and CT scans that contain rib fracture; and  
14 written a paper in the peer-reviewed literature on it.

15 THE COURT: Are you testifying as to what you see  
16 there or what Dr. Camacho told you he found?

17 THE WITNESS: I'm testifying to what Dr. Camacho  
18 told me he found and I'm just illustrating it for the jury.

19 MR. PRATHER: Your Honor, we would object. That is  
20 impermissible parroting.

21 THE COURT: We need to move on because the jury has  
22 already heard what Dr. Camacho said. For him to just repeat  
23 what he said that's not a good use of our time.

24 BY MS. WRIGHT:

25 Q Doctor Sochor, for purposes of the record, did you review

3:22:11PM 1 all of Dr. Camacho's findings with respect to the  
2 radiology?

3 A I did.

4 Q Did you use his findings in connection with the opinions  
5 you are rendering in this case?

6 A I did because the rib fractures are more frontal than  
7 they are back.

8 Q Now, there was a question asked the other day of  
9 Dr. Camacho about whether or not -- he described it --  
10 the imaging will often pick up or more likely pick up  
11 bleeding under the skin before you might see it on top of  
12 the skin. But if you see bleeding on top of the skin you  
13 absolutely have to see it on the radiology; is that  
14 familiar to you?

15 MR. PRATHER: Your Honor, I'm sorry to object again,  
16 but Dr. Sochor has not been qualified as an expert --

17 THE COURT: All right, he can give his opinion and  
18 he can rely upon what Dr. Camacho did and explain how he  
19 relied on that, but it needs to be his opinion and not simply  
20 saying what Dr. Camacho told him.

21 MS. WRIGHT: Your Honor, I want to set this up  
22 because Dr. Camacho was asked a question about a paper that  
23 you Dr. Sochor wrote whether -- the suggestion by Mr. Prather  
24 was that -- you wrote an article in which you said that only  
25 56 percent of soft tissue issues can be seen on CT radiology.

3:23:06PM 1

BY MS. WRIGHT:

2 Q Do you recall the paper you wrote?

3 A I do.

4 Q Have you reviewed that paper recently?

5 A I wrote the paper so, yes, and I have reviewed the paper.

6 Q So if someone represented to the jury that your article  
7 entitled, *Postmortem Computed Tomography as an Adjunct to*  
8 *Autopsy for Analyzing a Fatal Motor Vehicle Crash*  
9 *Injuries Results of a Pilot Study*, told jury that you in  
10 this paper said that only 56 percent of superficial soft  
11 tissue injuries on the skin could be seen by CT; would  
12 that be an accurate representation of your paper?

13 A It would not.

14 Q Could you tell us why?

15 A Because that paper looked at AIS3 injuries. When we talk  
16 about the injury severity scale before, which I have  
17 chaired in the past, we were looking for severe injuries.  
18 So an AIS3 injury in general is like a long bone  
19 fracture. It is a laceration that's going through a  
20 major blood vessel; that kind of injury.

21 It the injury community we used AIS3+ to describe  
22 things. So instead of breaking it down to the six  
23 levels, which takes a lot of granular data; you can say  
24 are you having serious injuries or are we not having  
25 serious injuries. And we've defined serious injury as

3:24:45PM 1 AIS3+ so that's why that paper specifically went to 3+.  
2 When I said you only see 56 percent of soft tissue  
3 injuries, soft tissue is: your liver, your kidney, your  
4 brain, right? It's not the skin. It is the organs  
5 inside. Hard tissue are bones and so when I did my  
6 research, if you had a liver laceration -- So you have  
7 the big liver laceration, usually, at the hospital if you  
8 are alive they will give you contrast to look at that.  
9 Because we know if you don't have contrast on the CT --  
10 And a CT scan is just a fancy x-ray taking a bunch of  
11 slices and then mathematically they put it back together  
12 to show you in 3D, right -- We couldn't see a lot of the  
13 injuries to the organs injuries like injuries to the  
14 kidneys and the livers because we didn't have the  
15 contrast material in there and that's what that alluded  
16 to in my paper. Yes, autopsies can pick up these things.  
17 CT can pick up other things that the autopsies don't pick  
18 up. In combination they work well together.

19 Q But are you commenting at all it would be misleading to  
20 suggest you said anything about surface skin hematomas  
21 not being found more than 56 percent of the time on  
22 radiology?

23 A Those were not looked at and it was an AIS level 3 and it  
24 was organs and soft tissue.

25 Q Did you consider for purposes of your opinions why Mrs.

3:26:16PM 1 Mills left the road and what caused her death?

2 A I did.

3 Q Would you walk us through what you did?

4 A Sure. If you look at the accident recon when I talked to  
5 Mr. Tandy about, you know, what did you see in -- I call  
6 it the black box or you can call it the electronic data  
7 recorder whatever you want -- What did you see in the  
8 black box? And he's, like, yeah, you got five seconds  
9 and nothing is happening. Nobody is braking or anything  
10 else like that. You look at the scene photos and you  
11 just see the two tracks and they just keep going off the  
12 road, right? Keep going off the road so there's nothing  
13 there.

14 When I asked about any intentional steering input  
15 they told me there was no intentional steering input; and  
16 then they just launch. After the vehicle comes to rest,  
17 I have the benefit of a critical care nurse that was on  
18 the scene immediately, parks his truck and trailer, goes  
19 to the Mills' vehicle, reaches through the windshield,  
20 makes a 911 call, reaches through the windshield and gets  
21 her pulse. And he says that it's weak -- or I say  
22 thready -- pulse; this is a smart individual. He tries  
23 to open the door, can't open the door. Says I'm going to  
24 run back to my truck. I'm going to get ball and hitch so  
25 I can break the window. Goes back to his truck. Comes

3:27:30PM 1 back in and he actually ends up going through the back of  
2 the vehicle -- same move I would have made because I want  
3 to know what her corotid pulse is.

4 At this point, he says in his depo that he just  
5 realizes he thinks there's only one person in the  
6 vehicle. So he comes back around. He checks her corotid  
7 pulse and it's gone. But then he hears Mr. Mills so he  
8 makes a second phone call, but the timing between those  
9 phone calls is important to me because it's two minutes  
10 and 28 seconds, okay. So we are talking two minutes and  
11 28 seconds. He said he was about a mile behind them, the  
12 two vehicles that were up ahead of him. And then he went  
13 around the curb and he said he lost sight of them. When  
14 he comes back into the eyesight of them, the gentleman  
15 that was in front of the Mills's is already turned around  
16 and he's coming in. So I gave a minute and a half for  
17 him to come, park is truck, and get out.

18 He says, when I got out of my truck I called 911.  
19 And so I have a minute and a half plus two and a half  
20 minutes so I have four minutes. In four minutes what  
21 kills you in a motor vehicle crash? That is massive  
22 skull crush, head injury, brain injury. That is a super  
23 high C1, C2 cervical spine injury that takes out all of  
24 your respiratory centers or you transect a vessel. So if  
25 you transect your aorta in a car crash and you just bleed



3:29:01PM 1 out, right? Your heart pumps and you bleed out in like  
2 one or two minutes.

3 None of those things were there, right? So I've got  
4 to go back to what else can do it; what other organ in  
5 the body can stop you dead in your tracks and kill you in  
6 less than five minutes? It's your heart. It has got to  
7 be the heart. There's no traumatic injuries that show  
8 that they would have killed Mrs. Mills.

9 Q What did you consider with respect to whether Mrs. Mills  
10 might in addition to those reasons have a cardiac event?

11 A You consider we call them the co-morbid conditions.  
12 Anybody can have a cardiac event at any time, but there  
13 are certain risk factors that you can have. And with  
14 Mrs. Mills' medical history she's diabetic that affects  
15 your vessels. She's got hypertension that affects your  
16 vessels. She has got hyperlipidemia. She has got a lot  
17 of fat in her blood. She suffers from emphysema. She  
18 has been going to her cardiologist from what I can tell  
19 20 years talking about my heart is racing and things like  
20 that. The cardiologist was treating her with medication  
21 and that kind of stuff.

22 Q Did you consider all of these medical conditions that we  
23 put up before the jury multiple times this week?

24 A Yes, there's a lot to mention. And at the end she has an  
25 enlarged heart so. Even Dr. Eisenstat says, yeah, her

3:30:33PM 1 heart was enlarged. We can split hairs over how enlarged  
2 it is, but if you think about your heart and as your  
3 heart gets larger and larger, right, you start spreading  
4 out the electrical system; and that's the problem when  
5 people have cardiomegaly, and that just means big heart,  
6 they spread out their electrical system and they can  
7 start to have problems.

8 Mrs. Mills months before she had this accident went  
9 back her cardiologist again and was like, hey, I am  
10 having more palpitations. And then her cardiologist  
11 keeps looking for coronary artery disease on her. He's  
12 looking at the pipes, but in my review of the medical  
13 records I never saw him look at the electrical system.  
14 He keeps testing the pipes, and the pipes keep coming  
15 back clean, and he's right; the pipes are clean. He ever  
16 looked at the electrical system though and if the  
17 electrical system goes and the heart is not pumping  
18 properly, you lose consciousness, you don't control your  
19 vehicle, you go off the road. And if your heart  
20 continues in that dysrhythmia --

21 MR. PRATHER: Your Honor --

22 THE WITNESS: -- then you die.

23 MR. PRATHER: I'm going to object again. Dr. Sochor  
24 also has not been qualified as a cardiologist. There's only  
25 one cardiologist in this case Dr. Ellis. And was letting it

3:31:51PM 1 go for a little while, but he hasn't been qualified as a  
2 cardiologist.

3 THE COURT: Overruled.

4 BY MS. WRIGHT:

5 Q Dr. Sochor, if Mrs. Mills presented to you these four  
6 pages of problems plus the repeating chest pains; what  
7 would you have done?

8 A You do more testing. You dig deeper. In the emergency  
9 department we can refer her to an electrophysiologist.  
10 Honestly, if I look at her records and I see that she has  
11 had these stress echos done again and again and they are  
12 always normal, I would be reassured that the pipes are  
13 okay. But if she keeps coming back to me and saying, you  
14 know, I'm tachycardic. It feels like my heart is  
15 pounding out of my chest. You know, and she's on  
16 medications that will help control her heart rate. But  
17 as her heart is growing she gets to one day where the  
18 medications aren't going to be able to take care of the  
19 dysrhythmia.

20 Q How would you describe a 5'1" 175-pound woman? She has a  
21 396-gram heart?

22 A It's a big heart. It's a big heart.

23 Q You wouldn't say just slightly enlarged?

24 A I would say it's very enlarged. She's near the upper  
25 limit of heart size.

3:33:09PM 1 Q Have you also considered Mrs. Mills' risk factors for a  
2 cardiac event?

3 A Absolutely. So she is in -- I'm not judging. I have a  
4 lot of patients like this. People like their cigarettes  
5 and she smokes and she doesn't have any intention of  
6 giving that up, but smoking is obviously a risk factor  
7 for disease and it's not helping her heart. She's got  
8 high blood pressure. The pressure on the chambers can  
9 make the heart bigger. It can affect your kidneys and  
10 things like that. She's got the diabetes so the sugar  
11 also affects the smaller vessels and that's why they get  
12 the neuropathy and everything in their feet, but it also  
13 affects the vessels in every organ; and it can affect  
14 your eyes and it can affect your heart also.

15 So the blood vessels that are feeding the electrical  
16 system can be affected by your diabetes. She's got a BMI  
17 over 30 which they call that obese, which is also a risk  
18 factor. She's very honest with her doctor. She's like,  
19 yeah, I've got an unhealthy diet and she exercises a lot.  
20 And she's got a family history and she's got some valve  
21 problems with her brothers. Also her father had died of  
22 a heart attack, but he was in his 70s. But she does  
23 have a little bit of history there too.

24 Q Dr. Sochor, did you come to an opinion to a reasonable  
25 degree of engineering and medical certainty as to what

3:34:35PM 1

caused Mrs. Mills' death?

2

A Yes. I think that she had a dysrhythmia of her heart that wasn't compatible with life, and this caused her to become unconscious, and lose control of her vehicle, and overturn it. And that's because when we look for the traumatic injuries or what could have killed her in this crash they just aren't there.

3

Q Now, Dr. Eisenstat as you know said Mrs. Mills died of positional asphyxia; did I ask you to evaluate that opinion?

4

5

A You did.

6

Q What's was your opinion regarding what Dr. Eisenstat had to say?

7

8

A Dr. Eisenstat said since there is nothing else this could have been that positional asphyxia is a diagnosis of exclusion, but there is certain things there. So there's no national standard on positional asphyxia. So you go to case reports and things like that. They try to put things together but the paper that I used in my report was from the nineties. I believe they were down in Miami and they had looked at positional asphyxia and they had all the characteristics and everything else. So these characteristics are you are in a position that doesn't allow you to breath. And when I look at my surrogate study and I look at the cab at the scene, like, her head

9

3:35:58PM 1 is right at the top of the headrest and the roof is right  
2 at the top of the headrest. And I'm like even if she's  
3 bending forward a little she has still got plenty of  
4 room.

5 Can you breathe is another one. Can they breath?  
6 And unfortunately when Mr. Harrison comes upon her at the  
7 scene he hears some gurgling and sounds like agonal  
8 respirations, which are kind of like at the end of life  
9 you have these agonal respirations. She didn't have  
10 anything that appeared to be occluding her airway or  
11 anything like that. And she room to move so if she could  
12 move and she was conscious she would have had room to  
13 move in that cab. There's a firefighter I believe that's  
14 going through and helping Mr. Mills. And they had  
15 removed Mrs. Mills and he is in that cab. His full body  
16 is through that cab. So there's this impression that  
17 there is no room in there and that she is crunched into  
18 this little ball is simply not true.

19 Q Was there anything on the radiology that also assisted  
20 you in determining based on what Dr. Camacho advised you  
21 whether there was any evidence that she could have been  
22 suffocating or stuck in there?

23 A Right. So if you have the roof coming down, and you are  
24 jamming your head, and your chin into your chest we also  
25 look for that. And we can see that on people that get

3:37:20PM 1

hit from behind when they get their chin to their chest.

2

She had no evidence of that. She had no bruising here.

3

She had no bruising here on radiology. We didn't see any

4

of that.

5

Q Are there any other indicia of positional asphyxia that

6

you sometimes see on patients?

7

A Yes. You also look for petechia and that will be in the

8

sclera. The sclera is the white part of your eye. And

9

when you get that petechia and you see this in patients

10

or victims that have been choked and things like that.

11

When you get that petechia it stains and so you would

12

still expect to see it. Even though she's embalmed and

13

everything else you would still expect to see it on her

14

sclera in both eyes. Then Eisenstat says that he doesn't

15

see any petechia. And the other thing is one of the

16

pre-hospital personnel describe a cardiac collar.

17

Something that we see with a cardiac event is you

18

get all of this purple discoloration on them. So when I

19

looked at that I said, okay, but they are upside down.

20

Maybe because they are upside down she is getting all of

21

this flow to her head or whatever. But I looked at Mr.

22

Mills and I looked at Mr. Mills' medical records and he

23

didn't have a bunch of purple and he is in the same

24

crash. He is upside down. He's upside down even longer

25

than obviously she is because unfortunately she has died.

3:38:40PM 1 He is there for a half an hour as they are extracting him  
2 and nobody describes anything purple on him.

3 Q Dr. Sochor I just want to sum up your opinions with  
4 respect to Mrs. Mills. Did you form an opinion to a  
5 reasonable degree of medical and engineering certainty as  
6 to whether she died of positional asphyxia?

7 A I did.

8 Q And what's that opinion?

9 A Opinion is she did not.

10 Q For the reasons you just stated?

11 A For the reasons I just stated.

12 Q Did you form an opinion to a reasonable degree of  
13 engineering and medical certainty as to whether her torso  
14 injuries, and her mild hematomas, and the sternal  
15 fracture were caused by the roof?

16 A They were not. Those were all very consistent with a  
17 frontal impact into a belt.

18 Q Now I want to talk briefly about Mr. Mills because it's  
19 fair to say your analysis of Mr. Mills' injuries is very  
20 similar with respect to the thoracic area as Mrs. Mills?

21 A Correct.

22 Q And we've already shown the animation, correct?

23 A Correct.

24 Q I think you identified his injuries for the jury already  
25 in terms of the T3, T5, T10, and T12 vertebral body



3:39:50PM 1

fractures; correct?

2

A Correct.

3

Q What other injuries did he have?

4

A He had some rib fractures so his rib fractures were up higher because he has got the belt coming across this way because he's the passenger. He also unfortunately has CLL, which is a type of leukemia which makes your spleen a little bit bigger. When I asked Dr. Camacho the measurement of the spleen he said it was about 30 percent bigger than a big spleen. So when an organism is a little bit bigger, and you have the trauma, and you load the abdomen it's more prone to injury. So he had a splenic lac; it wasn't a big splenic lac but it's still there. He had a splenic lac from that also. He also had sternal flexure on the front also from the belt. He also had a clavicular fracture and it was actually on the opposite side so it's on the left side, but when you look at that -- When you look at where that fracture is it was almost midline, so it's just right here where you can feel where your clavicles come in; it was on this end and that makes sense. If I'm compressing the cage -- Like I don't just compress where the belt is, right? If I'm compressing a cage I am taking a whole structure and compressing it. So that makes sense that he would have a fracture that's very proximal here, but it's actually on

25

3:41:08PM 1

the opposite side.

2

Q Dr. Sochor, if anyone testified that injuries that are outside that 1x7.8-inch belt mark or where your belt would go and that therefore they could not be from the belt; would that make sense?

3

A That would not make sense and that does not make biomechanical sense.

4

Q Mr. Mills also had some hematomas and some subarachnoid hemorrhage?

5

A He did. Mr. Mills had some -- I don't mean to minimize it. Any blood in the head is not great, okay, but Mr. Mills is older. He is 74 years old. He's in this big crash. A lot of times with the elderly you see it when they fall down, the brain is going to rotate relative to the skull and you are going to get some bleeding. So he had some subarachnoid blood and some subdural blood. When they get to Mr. Mills he is able to talk to them. He's a little bit hypoxic, but he is supposed to be on oxygen. Right. I would expect him to be hypoxic especially if --

6

Q And what does that mean?

7

A Hypoxic is low oxygen. Say that he's got an oxygen level in the 80s, but if I am the EMS crew and I just came upon this I don't know his medical history. I'm just trying to get this nice gentleman out of this car and

8

3:42:29PM 1 help him. And they are going to take some vital signs;  
2 and they see that he's hypoxic; and they put him on a  
3 non-rebreather; and he's got the rib fractures. But they  
4 also will ask you what's your name. What month is it?  
5 Who is the president of the United States, things like  
6 that. So we call that a glasgow coma scale, a GCS.

7 So Mrs. Mills' GCS -- it's from one to 15 -- 15  
8 being you and I right now having our conversation. You  
9 can't really go down to one. You can only go down to the  
10 three. Three is this table; it doesn't open its eyes; it  
11 doesn't make any sounds; and it doesn't respond to this  
12 pain.

13 Mr. Mills tough is a 15 the whole time. That just  
14 kind of tells me how much blood he had in his head. He  
15 does have an injury like that, but if something massive  
16 came in and was pushing down on his skull I would suspect  
17 a bigger bleed. We see in car crashes when their head  
18 whips forward. Again, the skull stops, the brain moves a  
19 little bit. And unfortunately of us as we age our brain  
20 gets a little bit smaller; it gets a little bit more  
21 atrophy; and we are more prone to breaking those bridging  
22 veins. So that's what I think happened here with Mr.  
23 Mills.

24 Q What did Mr. Mills die from?

25 A Unfortunately Mr. Mills died from pneumonia.

3:43:50PM 1 Q What causes pneumonia?

2 A That's a bacterial build up. Mr. Mills had COPD. COPD  
3 is you have alveoli in your lungs. And these alveoli  
4 help you exchange oxygen. When you get COPD if you have  
5 to alveoli next to each other they kind of fuse. And  
6 they are just not as good at exchanging oxygen anymore  
7 because you don't have as many of them. And they just  
8 become this big bleb. So you can't oxygenate great and  
9 that's probably why he was on the chronic oxygen.

10 The problem is when you get into a car crash and you  
11 don't oxygenate great, that it's going to be very hard to  
12 get you to recover. It's going to be very hard to keep  
13 your oxygen levels up. And so when I went through the  
14 records they had him on a non-rebreather, which is  
15 15 liters; it's like as much oxygen as you can get into  
16 him. And then you have him on some high flow oxygen  
17 that's even more so they're trying to recruit every  
18 alveoli they can, but he just doesn't have as many  
19 alveoli as you and I do.

20 So it finally gets down to they put him on BiPAP and  
21 that's almost like that CPAP thing you have when you  
22 sleep at night. So BiPAP is positive pressure so it's  
23 keeping his alveoli open and is trying to get him more  
24 oxygen. The issue was from my reading of the medical  
25 records is he started vomiting on the BiPAP. And the he

3:45:15PM 1

is moved to palliative care because they don't want to put him on life support intubate hi him. So they just wanted to kind of see from my reading and see how it went. Fortunately, once they put him on palliative care that means they are not going to do any more interventions. It's obviously uncomfortable for him. His wife just died and everything else. And the family decides to put him on palliative care and unfortunately he passes.

10 Q Dr. Sochor, did you come to an opinion to a reasonable  
11 degree of medical and engineering certainty as to whether  
12 or not Mr. Mills' injuries that led to his pneumonia and  
13 ultimate death were caused by the roof?

14 A They were not. They were caused by the frontal impacts  
15 and his injuries are characteristic just like hers were.

16 Q Were any of his injuries that led to his death  
17 contributed to by the roof?

18 A No, I don't believe so.

19 Q Did either Mr. or Mrs. Mills have any significant head or  
20 neck injury that led or contributed to their death?

21 A They did not. Again, Mr. Mills had the brain bleeds that  
22 were tiny. They were not -- Obviously he is GCS 15. He  
23 is talking at the scene. Didn't kill him there and they  
24 did not have any high cervical spine injuries that we  
25 saw.

3:46:31PM 1

Q Did you come to an opinion to a reasonable degree of engineering and medical certainty as to whether he had positional asphyxia or hypoxia caused by the roof?

2

3

4

A Right. He did not. So he is talking at the scene. He's breathing at the scene. He's asking questions. He is concerned about his wife so he is not in any position where he can't breathe, can't take a breath. He is actually speaking so that means that your airway is open.

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Q Dr. Sochor, if someone like Mr. and Mrs. Mills had come to the emergency room where you work with the rib injuries that they had; what would the course of treatment have been?

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A The course of treatment is -- I see people in car crashes a lot and as you get older and they break some ribs so a lot of the treatment would be depending on how many rib fractures you have sometimes they admit you to the hospital and we just watch you to make sure that you don't develop the pneumonia. The other times if you're not a smoker and you don't have all the co-morbid conditions, then we give you pain medicine. We give you something called an incentives barometer. So we would want you to expand your lungs and that's that little ball they give you after surgery that they tell you to do ten times an hour or whatever. But that's just to clean out your lungs so the bacteria don't build up so you don't

3:47:46PM 1 get the pneumonia. Because you already have a bunch of  
2 trauma. You broke ribs. Your lungs aren't happy anyways  
3 and know you are putting bacteria in them and it just  
4 makes for a bad combination.

5 Q You mentioned the AIS scale earlier. Did Mr. and Mrs.  
6 Mills have any injuries that were greater than AIS3?

7 A They did not.

8 Q Thank you.

9 THE COURT: Cross-examination.

10 MR. PRATHER: Yes, Your Honor.

11 CROSS EXAMINATION

12 BY MR. PRATHER:

13 Q Good afternoon Dr. Sochor.

14 A Good afternoon.

15 Q One of the first questions Ford's lawyer asked you is  
16 where you are from and you told the jury that you are  
17 from Charlottesville?

18 A Yes.

19 Q Isn't it true that you live in Barboursville, Virginia.

20 A I am in Barboursville, Virginia; it's in Albemarle  
21 County, but yes.

22 Q And Barboursville is near where all of that beautiful  
23 Virginia horse country is; isn't that correct, sir?

24 A Charlottesville is too, yes.

25 Q Isn't it true that you are here today in this courtroom

3:49:26PM 1

in Georgia giving expert testimony on behalf of Ford  
Motor Company a product manufacturer?

2

3

A I was retained by the lawyers that Ford Motor Company  
hired to look at the injuries in this crash.

4

5

Q Isn't it true that this isn't the first time you've flown  
down from Virginia to testify as a paid expert witness in  
a Georgia courtroom on behalf of a product manufacture  
who was a defendant in a product liability lawsuit?

6

7

8

9

A I don't know if I've testified in Georgia before.

10

Q You haven't testified in Georgia before?

11

A I may have, but I don't remember in a court case.

12

Q You haven't testified in Georgia in a court case, is that  
your testimony to this jury?

13

14

A I said I don't remember, but I don't recall.

15

Q Well, let me try to refresh your recollection. Do you  
recall testifying in a Georgia court in DeKalb County  
Georgia?

16

17

18

A I believe I did.

19

Q Do you recall the name of that case?

20

A I do not.

21

Q Do you recall when you testified in a court in DeKalb  
County Georgia?

22

23

A I don't.

24

Q Isn't it true that you testified in a court in DeKalb  
County Georgia as a paid expert on behalf of a product

25



3:50:44PM 1

manufacturer defendant in a product liability case in  
2022?

2

3

A In 2022 that could have been the case so it was a trial.

4

Q Isn't it true, sir, that on May 9<sup>th</sup>, 2022, you gave  
testimony in a courtroom very similar to this in the  
State Court in DeKalb County Georgia; isn't that true,  
sir?

7

8

A I don't know. I would have to look at my sheet. I'd  
have to look at my testimony list to see what case it  
was.

10

11

Q Do you recall a case called Trice vs. Dorel Juvenile  
Products?

12

13

A I do.

14

Q Is that the case in which you testified in the State  
Court of DeKalb County on March 9<sup>th</sup>, 2022, just a  
little less than three years ago?

16

17

A It could have been. Again, I would have to look at my  
case list because I've done some -- I have obviously  
testified in court now I think this is my twelfth time so  
I would have to look.

20

21

Q Do you dispute that you testified in a state court in the  
State Court of DeKalb County on March 9<sup>th</sup>, 2022, in the  
case of Trice vs. Dorel Juvenile Group?

23

24

A Yeah, it very well could be. Yes.

25

Q Isn't it true that you were testifying on behalf of Dorel

3:52:11PM 1

Juvenile Group in that case weren't you, sir?

2

A Yes, I was.

3

Q Isn't it true that the Dorel Juvenile Group manufactures child booster seats?

4

5

A They do.

6

Q And isn't it true you've testified for Dorel Juvenile

7

Group in lots of cases all across the country, not just

8

here in Georgia?

9

A Again, when I told you that I testified 12 times I think

10

in terms of when I do child seat cases I think that has

11

probably been less than six. So it hasn't been over all

12

the country. There are 50 states in the country.

13

Q Isn't it true, sir, that the Trice vs. Dorel Juvenile

14

Group case in DeKalb County Georgia was brought by the

15

parents of a 4-year-old boy who brought a claim that

16

their son was completely paralyzed for life, rendered a

17

quadriplegic due to a defective child booster seat

18

designed and sold by Dorel Juvenile Group?

19

A That was the allegation, yes.

20

Q Isn't it true that you testified in that case that the

21

4-year-old boy's total paralysis, his quadriplegia was

22

not caused by the booster seat, but was instead caused

23

because according to you -- Mark Sochor -- this little

24

boy was improperly wearing his seatbelt behind his back?

25

A Correct.

3:53:31PM 1 Q And you just came in front of this jury and testified,  
2 put up an animation on the screen, that showed that Mrs.  
3 Mills was improperly wearing her seatbelt behind her back  
4 didn't you, sir?

5 A It wasn't behind her back. It was under her arm.

6 Q You just testified to this jury that Mrs. Mills was  
7 improperly wearing her seatbelt didn't you, sir?

8 A She was improperly wearing her seatbelt.

9 Q Just like you testified against that 4-year-old boy in  
10 DeKalb County, sir; isn't that true?

11 A A large percentage of the population doesn't wear their  
12 seatbelt properly, but, yeah so we need to figure why  
13 they're not using it properly.

14 Q Sir, isn't it true you've never testified for the parent  
15 of a child against Dorel Juvenile Group?

16 A I have not.

17 Q Now, sir, you say that when you are working in the  
18 emergency department and you identify a cardiac issue you  
19 call the cardiologists who are up on the second floor of  
20 your hospital; do you remember testifying to that?

21 A I don't know that I said the second-floor. I said  
22 upstairs. And I do call cardiologists for when there's  
23 ST-elevation MI, which is a heart attack because they  
24 have to take them to the cath lab and you have to make  
25 certain national standards. And you have got to get them

3:54:52PM 1

there quickly. We work as a team.

2 Q You never treated Mrs. Mills while she was alive did you,  
3 sir?

4 A No.

5 Q Isn't it true that despite the fact that you've flown  
6 down to Georgia to testify in product liability lawsuits  
7 on behalf of Ford, Dorel Juvenile Group, and who knows  
8 who else; isn't it true that you never flew down to  
9 Georgia from Virginia to go meet with Dr. Ellis, Mrs.  
10 Mills' treating cardiologist?

11 A I did not.

12 Q Isn't it true you never flew down here to meet with  
13 Dr. Cochran?

14 A I don't usually meet with any of their doctors. I look  
15 at the records.

16 Q Isn't it true you never flew down here to meet with  
17 Dr. Reardon?

18 A No.

19 Q Let me ask you this, sir. If you didn't fly down here to  
20 Georgia to meet with any of those treatment providers  
21 like you flew down here to testify in front of this jury,  
22 did you ever pick up a telephone to call Dr. Ellis to ask  
23 him if he thought that Mrs. Mills had any cardiac issues?

24 A I read his deposition.

25 Q That wasn't my question, sir. My question, sir, is did

3:56:03PM 1 you ever pickup a telephone and call Dr. Ellis and in  
2 Thomasville, Georgia and ask him if he thought Mrs. Mills  
3 had any cardiac issues that led to her death on August  
4 22<sup>nd</sup>, 2022?

5 A No, and I wouldn't normally do that. I don't do that on  
6 the Virginia DMV. I don't call their physicians. I look  
7 at their records.

8 Q Well, you do it when you're at work in the emergency room  
9 department don't you?

10 A That's the team that's in the hospital that's going to do  
11 the intervention; that's a completely different thing.  
12 Is Dr. Ellis going to come through the phone and  
13 reperfuse their artery? That's what I'm doing in the  
14 hospital.

15 Q So the work you do in your professional life is different  
16 than the work you do in your life as a paid testifying  
17 witness for product manufacturer isn't it, sir?

18 A That is not true. When I'm sitting on the DMV board  
19 which is a government appointment, but I'm not paid for  
20 it, I am reviewing records too and I'm making judgment on  
21 people that can drive and not drive. I'm making judgment  
22 on people if they had a dysrhythmia. I am making  
23 judgments on if they're taking too many opioids. I'm  
24 make judgments on if they should be able to drive again.

25 Q Did you ever ask Ford's lawyer if you could talk with

3:57:20PM 1

Dr. Ellis?

2 A Dr. Ellis is retired. I had his deposition and I had all  
3 of his medical records to look at.

4 Q Sir, will you just answer my question? Did you ever ask  
5 Ford's lawyers whether you could talk to Dr. Ellis?

6 A Right. No, it would be inappropriate.

7 Q Inappropriate?

8 A Yeah.

9 Q You wouldn't want more information rather than less  
10 information from a man who had treated Mrs. Mills as a  
11 cardiologist when you come into this court of law and  
12 testify to this jury that Mrs. Mills died of some kind of  
13 cardiac event?

14 A I had his records and I had his deposition when he was  
15 asked all of those questions about her cardiac history.

16 Q Let me ask you this, sir. When you read in his  
17 deposition that all of these risk factors that Ford's  
18 lawyers keep talking about refuted the idea that Mrs.  
19 Mills died of a sudden cardiac event, did that not cause  
20 you to want to call Dr. Ellis and say; hey, what did you  
21 mean by that there?

22 A So your question is a little tough to understand. What  
23 do you mean by refuted? It didn't make sense what you  
24 just asked me.

25 Q Do we need to pull up Dr. Ellis' deposition?

3:58:51PM 1 A Sure.

2 MS. WRIGHT: Your Honor, I would object to this line  
3 of questioning. Obviously, there are HIPAA rules. I assume  
4 also we had a HIPAA release to obtain the records. And when  
5 went to schedule the deposition Mr. Butler insisted we go  
6 through him. So I think this line of witnesses of this  
7 witness is inappropriate and objectionable.

8 THE COURT: Overruled.

9 BY MR. PRATHER:

10 Q Here's my question Dr. Sochor. You said you've read  
11 Dr. Ellis's deposition, correct?

12 A Correct.

13 Q When you read in his deposition that Mrs. Mills had no  
14 cardiac symptoms; when you read in his deposition that  
15 her tachycardia was not dangerous; when you read in his  
16 deposition that each time a workup was done it was  
17 negative for coronary disease -- You read in his  
18 deposition that she was not at risk for a heart attack.  
19 You read in his deposition that there was no  
20 atherosclerosis. You read in his deposition that there  
21 was no pathology to support a heart attack or that she  
22 was unconscious. You read in his deposition that are not  
23 any medical records to support a sudden cardiac event.  
24 Did you think at that point, maybe I need to call Dr.  
25 Ellis before I write this report and give this deposition

4:00:39PM 1

saying that this woman died of a sudden cardiac event?

2

Did that thought ever cross your mind?

3

A No. You don't usually call them up. The non-cardia symptoms -- She's having cardia symptoms. She's having the tachycardia. He's working up the plumbing. He's not working up the electrical.

7

Q How about this; no evidence of coronary disease?

8

A Coronary disease that's the plumbing. So that's her vessels that's not her electrical system. That's her vessels. Coronary means vessel.

10

11

Q How about when you read in his testimony that he said there was no evidence of anything to cause her to become suddenly unconscious; did that cause a lightbulb to go off in your head? Hey, maybe I need to investigate this a little more before I come into this court of law and tell this jury that she was unconscious.

16

17

A I did. I went to the literature, which I've written part of the cardiology literature myself on dysrhythmias in a chapter in my book. I went to the literature and looked. Okay, if somebody dies of sudden cardiac death and they have a clean heart; are there people out there that still do that? And there are. There are ten 10 percent of them. And you are right, most of the time it is because of coronary disease and it's because of the plumbing. The other 10 percent it's because of the electrical

25



4:02:00PM 1 system.

2 He didn't look at the electrical system. He kept  
3 looking at the plumbing and that's great. He's still  
4 ordering tests when she's coming in. You're telling me  
5 that he is unconcerned about this chest pain, yet, he is  
6 still ordering her a stress test three months before this  
7 crash. She just never gets there to get it.

8 Q During your direct examination did you tell the jury  
9 anything about 10 percent?

10 A I believe I did.

11 Q You did?

12 A Yeah.

13 Q I don't recall it. So a 10 percent chance that she had a  
14 cardiac event and a 90 percent chance that she didn't,  
15 correct?

16 A No. Of people that die -- So if somebody in this  
17 courtroom, God for bid, drops down right now and they die  
18 in the next five minutes; it would a sudden cardiac  
19 event. Okay. When they autopsied those people and they  
20 looked at those people, yeah, 90 percent of those people  
21 had plumbing problems. They had coronary artery disease  
22 and the coronary got blocked. The heart couldn't beat  
23 and they died, but the other 10 percent had perfectly  
24 clean hearts. So its a dysrhythmia if it's not the  
25 coronary disease because it wasn't a stroke; it wasn't a

4:03:27PM 1

pulmonary embolism; it wasn't an aneurysm that that let  
2 go. They couldn't find any of those things so it's a  
3 dysrhythmia.

4

Q Isn't it true, sir, that you don't claim that Mrs. Mills  
5 had a heart attack?

6

A I do not claim that she had a heart attack. She had  
7 sudden cardiac death. She had no dysrhythmia.

8

Q Isn't it true, sir, that in your opinion or as a matter  
9 of fact there is no test that you did or that anybody  
10 could do to determine whether Mrs. Mills had this  
11 so-called dysrhythmia that you keep talking about?

12

A She has evidence that she's not controlling her vehicle.  
13 She's unconscious and you are right. A pathologists,  
14 Eisenstat can't look at her and figure it out because  
15 it's the electrical system; it's the nerves. You can't  
16 tell.

17

Q Sir, that was not my question.

18

A Oh, what was your question?

19

Q Well, if you listen to me --

20

A I did listen to you and I answered so ask it again.

21

Q Sir, my question is, isn't it true that as a matter of  
22 fact in your opinion there is no test that you could do  
23 that would show that Mrs. Mills had this so-called  
24 dysrhythmia that you keep telling this jury about?

25

A The only way we could detect a dysrhythmia is if she had

4:04:45PM 1 a halter monitor on or an event recorder, right? And so  
2 -- Or if she had a pacemaker and AICD it would be  
3 recording her heartbeat the entire time. Dr. Ellis  
4 didn't put these things on her even though she was  
5 complaining about it. He may have in the past and they  
6 found out that, yeah, we didn't see any dysrhythmias on  
7 that. But as her heart grew her electrical systems was  
8 not growing with it. So there are tests that could have  
9 been on her, but they weren't on her.

10 Q The answer to my question is, no; isn't it, sir?

11 A I think your question was that you said that there is no  
12 way that there's anything that could detect this thing  
13 going down the road in the universe and I'm like, that's  
14 not true. She could have had a device on her that  
15 detected this and after this crash we could have gone in  
16 and interrogated that device and found out exactly what  
17 happened, but she wasn't wearing one.

18 Q Because she didn't have any cardiac problems isn't that  
19 true, sir?

20 A She has palpitations. She continues to go back to her  
21 cardiologist and her regular doctor. They are putting  
22 her on medications. They are ordering her tests and they  
23 continue to order her tests. If they are so  
24 non-concerned about her why are they still ordering tests  
25 on her? Why are they changing her medications, her

4:06:11PM 1

anti-arhythmic medications, beta blockers?

2 Q Sir, wouldn't you know the answer to those question if  
3 you had just called up Dr. Ellis in Thomasville, a  
4 cardiologist for 40 years in Southwest Georgia, who could  
5 answer those questions for you?

6 A This is a patient that he's got lots of patient and  
7 things like that. But, no, we don't usually call them up  
8 and ask them about what they missed.

9 Q Dr. Sochor, one of the first things you were asked is  
10 where you were from and you said Charlottesville and you  
11 live in Barboursville, Virginia. Isn't it true that you  
12 are actually from not Charlottesville, Virginia but  
13 Michigan?

14 A I am. I was born and raised in Michigan and I moved to  
15 the University of Virginia after I was at the University  
16 of Michigan.

17 Q Isn't it true that your grandfather worked in the  
18 automotive industry?

19 A It is.

20 Q Did he work for General Motors?

21 A Chevrolet.

22 Q Isn't it true that your father worked in the automotive  
23 industry?

24 A Most people in Michigan work in the automotive industry,  
25 but, yes, my father did too.

4:07:18PM 1 Q He worked for Buick Automobile?

2 A Yes.

3 Q Isn't it true that your brother-in-law currently works as

4 a designer for General Motors?

5 A He does.

6 Q Isn't it true that when you were in college your father

7 used one of his connections at Chrysler to get you a

8 summer job at Chrysler?

9 A So it was General Motors. It was one of the families in

10 the neighborhood that I used to babysit their children.

11 So he was my connection to get a job down in Pontiac,

12 Michigan. And my brother-in-law is also in Michigan

13 where they make cars.

14 Q So General Motors not Chrysler during college. But isn't

15 it true that after you graduated from college you went to

16 work for Chrysler?

17 A I did.

18 Q Isn't it true that while you were working for Chrysler,

19 Chrysler paid for you to go to graduate school?

20 A They did. That was part of the program that I was in,

21 the Chrysler Institute of Engineering. They would pay

22 for your classes.

23 Q And you never paid Chrysler back for that did you, sir?

24 A I didn't.

25 Q Isn't it true that Chrysler paid for you to go to Wayne

4:08:21PM 1

State University?

2 A That was the graduate school, yes.

3 Q Isn't it true that Wayne State University is in Detroit,  
4 Michigan?

5 A It is.

6 Q Isn't it true that Wayne State is about 15 minutes from  
7 Ford's Ford Motor Company's world headquarters?

8 A It is.

9 Q Isn't it true that at Wayne State you got a graduate  
10 degree in mechanical engineering with an emphasis in  
11 biomechanics?

12 A That is true.

13 Q Isn't it true that you decided to get that degree at  
14 Wayne State University so that you can do just what  
15 you're doing here in court today, trying to defend an  
16 automaker as an expert witness in court cases?

17 A That is completely untrue.

18 Q Isn't it true that Wayne State brags about its  
19 relationships with the automotive industry?

20 A Wayne State is in our backyard and I'm sure that they  
21 have a lot of automotive connections; and they probably  
22 fund a lot of their labs.

23 Q Isn't it true that Wayne State University regularly  
24 churns our testifying witnesses who testify as experts  
25 for automakers in product liability cases?

4:09:35PM 1

A NO.

2 Q Isn't it true that Ford's expert witness Elizabeth Rafael  
3 who inspected the truck in this case and participated in  
4 layer engineering conferences in this case, but who Ford  
5 will not bring here to testify in front of this jury has  
6 a degree from Wayne State University?

7 A She does but it's a medical degree.

8 Q You said, sir, that you've been retained by other lawyers  
9 in this case. Do you recall telling Ford's lawyer that  
10 during your direct examination?

11 A I'm sorry. Can you repeat the question?

12 Q Sure, let me go back. Isn't it true that when Elizabeth  
13 Rafael who is one of your co-alumni from Wayne State  
14 University went and inspected the truck in this case on  
15 July 19<sup>th</sup>, 2023, you inspected the truck with her?

16 A She was there and I was there, yes.

17 Q You said during your direct examination that you had been  
18 retained by other lawyers who are here in the courtroom;  
19 do you recall testifying to that?

20 A Yes.

21 Q You were talking about other lawyers from Ford Motor  
22 Company, correct?

23 A Lawyers that work for Ford, yes.

24 Q You've never been retained by any of the Plaintiffs'  
25 lawyers in this case, correct?

4:11:07PM 1 A Not to my knowledge, no.

2 Q Isn't that true because 95 percent of the time you are

3 testifying for the defendant in a lawsuit, correct?

4 A That's who calls me and so that's the case that I work

5 up. I also do Plaintiff work, but I don't do product

6 plaintiff work because they don't call me.

7 Q Maybe 5 percent of your work is Plaintiffs' cases, but

8 none of the 100 percent of your work -- none of your work

9 for plaintiffs is product liability-related; correct?

10 A Correct.

11 Q Isn't it true that you have never testified for a citizen

12 against an automaker?

13 A That is correct.

14 Q Isn't it true that you've never testified for a citizen

15 against a child seat manufacturer?

16 A That's correct.

17 Q And you've testified for a lot of automakers, correct?

18 A I have done depositions, but you've got to define a lot.

19 Q Jus so we are clear on what we are talking about with

20 testimony, I am talking about depositions or trial

21 testimony; do understand that, sir?

22 A Correct.

23 Q In terms of a lot you've testified for Ford Motor

24 Company. You are here today, right?

25 A Correct.



4:12:16PM 1 Q You testified for General Motors?

2 A I have.

3 Q You've testified for Chrysler?

4 A I have.

5 Q You testified for Nissan?

6 A Yep, I've done depositions for them. Yes.

7 Q You've testified for BMW, correct?

8 A I have.

9 Q In terms of child seat manufacturers that you have

10 testified for, you have testified for Draco?

11 A Correct.

12 Q You testified for Evenflo?

13 A Yes.

14 Q And you've testified for Dorel Juvenile Group, correct?

15 A Correct.

16 Q And those are all cases in which there was an allegation

17 in which a child was killed, paralyzed, or injured in

18 connection with a car seat; correct?

19 A Correct.

20 Q Sir, you testified earlier about this fellowship that you

21 had with NHTSA for about two years?

22 A Twenty-seven months.

23 Q How many people work for NHTSA?

24 A How many people work for NHTSA? I don't know the total

25 number.

4:13:12PM 1 Q It's less than a thousand, correct?

2 A I don't know.

3 Q When was the last time NHTSA ordered an automaker to

4 recall a car?

5 A I don't know.

6 Q Do you know any time in American history in which NHTSA

7 has ordered an automaker to recall a car because it was

8 defective?

9 A The entire car or fix it.

10 Q My question, sir, is do you know of any time in which

11 NHTSA has ordered an automaker to recall a car because of

12 a defect?

13 A The entire car; that's what I'm asking for clarification

14 on. Are you saying, like, NHTSA says recall all

15 Explorers; is that what you are asking me?

16 Q I'm asking you whether NHTSA has involuntary ordered a

17 recall with respect to a car at anytime in American

18 history?

19 A In terms of the entire vehicle or making a fix; that's

20 what I'm asking you. Is it the entire vehicle or is a

21 fix? They said, you know, there seems to be a defect

22 here. Our customers are complaining. You need to

23 replace the right headlight. What are you talking about?

24 Q Has NHTSA ever ordered an involuntary recall of an entire

25 car?

4:14:33PM 1 A Of an entire car I am not sure.

2 Q Isn't it true that the reason for that is that NHTSA is

3 filled with people like you who have these cozy

4 relationships with automakers?

5 A That is completely not true and I said that I didn't know

6 so I don't even -- Your question doesn't even make sense.

7 Q Sir, I want ask you about this opinion you have that Mrs.

8 Mills could have extricated herself from the car if she

9 had not had a cardiac event. Did I understand your

10 testimony correctly?

11 A You did not. You haven't understood a lot of it, but

12 what I said was she could move her position had she been

13 alive; and would be subject to positional asphyxia.

14 That's one of the rules of the positional asphyxia or if

15 you want to call them rules, but obviously there's no

16 national standard.

17 Q Sir, isn't it true that Mrs. Mills' hair was crushed

18 between the headrest and the roof?

19 A Yes. Mrs. Mills had longer hair, and when the vehicle

20 turned over, and there was deformation of the roof her

21 hair got caught between the top of the seat and the roof

22 is what they said when they extricated her are out of

23 there.

24 Q Are you aware that Georgia State Trooper Jacob Sanchez

25 testified to this jury last week that seeing Mrs. Mills

4:16:25PM 1 extricated as her hair was crushed between the roof and  
2 the headrest was like seeing a horror movie it was so  
3 awful?

4 A I am not privy to any of the proceedings that went on  
5 before I got on the stand today.

6 Q Isn't it true that Mrs. Mills was upside down with the  
7 roof crashing down on her?

8 A She was upside down, correct. She would have been near  
9 the roof because she's upside down.

10 Q Isn't it true that Mrs. Mills had multiple broken ribs,  
11 spinal fractures, and other injuries?

12 A She did as I described to the jury.

13 Q Isn't it true that Mrs. Mills door couldn't be opened by  
14 first responders at the scene?

15 A It could not.

16 Q Isn't it true that because the first responders couldn't  
17 get Mrs. Mills' door open Flight Nurse Harrison had to go  
18 get a trailer hitch from his truck to break the window?

19 A Right. I had stated that.

20 Q Isn't it true it took a grown man in Decatur County  
21 multiple attempts to break that window?

22 A I don't know how many attempts he had.

23 Q Have you watched dash cam video?

24 A I've seen dash cam video. I don't know how many strikes  
25 it was.

4:17:42PM 1 Q Isn't it true that the roof was crushed so bad that first  
2 responders couldn't see Mr. Mills in the truck?

3 A They didn't know that Mr. Mills was there. It was more  
4 deformed on the passenger side. They could easily see  
5 the driver side and see somebody in there.

6 Q In light of all that evidence, Mrs. Mills' hair crushed  
7 between -- as you admit -- crushed between the roof and  
8 the headrest. It looks like a horror scene to have to  
9 get her head out of there. She's upside down. The roof  
10 is crushed down. She has got multiple broken ribs,  
11 spinal fractures; was he having trouble breathing?

12 A Unfortunately she had died so she wasn't breathing.

13 Q Is it really your sworn testimony to this jury that Mrs.  
14 Mills was able to move herself out of that position?

15 A I didn't say that. I said one of the criteria for  
16 positional asphyxia and why this scenario doesn't meet it  
17 is that you're not supposed to have room to move  
18 anywhere. And when you put a surrogate in the truck and  
19 when you look at the truck upside down at the scene, you  
20 can look in a full window; and actually there is a full  
21 window there. So you've got a woman that -- We put  
22 surrogates in the truck. You saw where the headrest was.  
23 There's room in there. There is room in there for her to  
24 move, but unfortunately she's dead. She can't move.

25 Q So you told this jury that Mrs. Mills had the room to

4:19:19PM 1 move with her hair crushed in between the headrest and  
2 the roof, folded over, broken ribs. If she was alive, is  
3 it your testimony to this jury that she would have been  
4 able to move out of that position?

5 A I think that she could have rolled up on to her side if  
6 she could have moved somehow and that is the definition  
7 of the positional asphyxia. That's what Eisenstat said  
8 she had died of. I simply stated that that's not true.  
9 It's not true. There is room for her to move.

10 Q Sir, how many scene witnesses testified that Mrs. Mills  
11 had difficulty breathing?

12 A That I don't know. I know it would be Harrison was  
13 there. But, again, after Harrison came back around to  
14 the vehicle she wasn't breathing anymore. So I don't  
15 think that the other ones could say that she was having  
16 trouble breathing because she had stopped breathing.

17 Q You just testified to this jury that she wasn't breathing  
18 because she was dead. You just ignored all of this scene  
19 witness testimony haven't you, sir?

20 A They might have been listening to Mr. Mills, but she  
21 didn't have a pulse.

22 Q You brought up this surrogate study. Can we please put  
23 up Defense Exhibit 313.13, which was I believe admitted  
24 during Ford's lawyer's examination?

25 MR. PRATHER: Sorry, I wrote down the wrong number.

4:20:46PM 1 Pardon me Your Honor.

2 THE COURT: Mr. Prather, how much longer do you  
3 think you have?

4 MR. PRATHER: Your Honor, probably 15 minutes.

5 THE COURT: Let's take a break at this time so he  
6 can get his exhibits straight. We will come back and finish  
7 this testimony. Go to the jury room. Do not discuss the  
8 case. We will be in recess for 15 minutes.

9 [RECESS]

10 Wednesday, February 12, 2025 16:35:54

11 COURT SECURITY OFFICER: All rise.

12 THE COURT: Bring the jury down.

13 MR. BUTLER: Judge, we have another exhibit problem,  
14 but I think we may have sorted it out. Multiple numbers for  
15 different exhibits. Multiple exhibits with the same number.

16 THE COURT: With all these exhibits I'm not  
17 surprised.

18 [JURY ENTERS COURTROOM]

19 THE COURT: Mr. Prather, you can may continue.

20 MR. PRATHER: Thank you, Your Honor.

21 BY MR. PRATHER:

22 Q Please put up Plaintiffs' Exhibit 730, which has not been  
23 admitted.

24 Dr. Sochor, a few minutes ago I asked you about an  
25 inspection that you conducted of the subject truck with

4:39:33PM 1

Elizabeth Rafael on July 19<sup>th</sup>, 2023; do you recognize  
2 your signature on Plaintiffs' Exhibit which 30, which is  
3 the inspection log from that day?

4 A I do.

5 MR. PRATHER: Your Honor. We would move to tender  
6 Plaintiffs' Exhibit 730 into evidence.

7 THE COURT: Any objection?

8 MS. WRIGHT: Yes, Your Honor, it's hearsay. I don't  
9 care if he testifies about that log but it is hearsay.

10 THE COURT: Are you just trying to admit it to show  
11 that he was present?

12 MR. PRATHER: Yes, Your Honor.

13 THE COURT: Ask him that question.

14 MR. PRATHER: Okay.

15 BY MR. PRATHER:

16 Q Mr. Sochor, you attended a vehicle inspection of the  
17 subject truck on July 19<sup>th</sup>, 2023; correct?

18 A I did.

19 Q Along with Elizabeth Rafael another Ford expert witness?

20 A She was there, yes.

21 Q That's your signature on the page, correct?

22 A That's my signature on the page, yes.

23 THE COURT: Was there a need to admit it?

24 MR. PRATHER: It's fine Your Honor. Thank you.

25 BY MR. PRATHER:



4:40:40PM 1 Q Please put up Defense Exhibit 313.43. Dr. Sochor, this  
2 document was previously admitted. Dr. Sochor, this is  
3 one of the photos from your surrogate study; correct?  
4 A Correct.  
5 Q First let me ask you this. Isn't it true that you served  
6 your expert report in this case on April 15<sup>th</sup>, 2024?  
7 A I did.  
8 Q And your expert report purports to contain opinions  
9 regarding biomechanics, human body kinematics, injury  
10 causation and forensic scene reconstruction; correct?  
11 A Correct.  
12 Q Isn't it true that in your April 15<sup>th</sup>, 2024, report you  
13 stated that you are, "familiar with the generally  
14 accepted methodology used in the fields of biomechanics,  
15 human body kinematics, injury causation, and forensic  
16 scene reconstruction"; is that correct?  
17 A That's correct.  
18 Q Isn't it true that you wrote in your April 15<sup>th</sup>, 2024,  
19 that the generally accepted methodology in these fields  
20 includes among other things "conducting surrogate  
21 studies"?  
22 A It does.  
23 Q You wrote that in your report, correct?  
24 A Correct.  
25 Q Isn't it true that you also wrote in your April 15<sup>th</sup>,

4:42:20PM 1 2024 report that, "I have followed the generally accepted  
2 methodology in this case"?

3 A I did.

4 Q Isn't it true that was a false statement, sir?

5 A So the surrogate study hadn't been done. There's other  
6 things in that statement prior that we haven't. That's  
7 the general followed principles of biomechanics.  
8 Sometimes you don't have the vehicles and you just use  
9 pictures. Sometimes you have other instances where you  
10 don't have all the material that you want to have  
11 available.

12 Q Isn't it true that as of April 15<sup>th</sup>, 2024, when you  
13 served your expert report in this case you said that you  
14 had to followed the generally accepted methodology in  
15 your field; which included conducting surrogate studies,  
16 you had not conducted a surrogate study; isn't that true,  
17 sir?

18 A It said generally accepted. So it didn't say that this  
19 with the rule. I had done everything I could up to that  
20 point for that. I also had a material list on that  
21 report which said everything that I had done up to that  
22 point and what I based my report on. We couldn't get  
23 together for the surrogate study so the report was turned  
24 in and then the surrogate study was done. And then  
25 before I did a deposition and before you guys asked me

4:43:36PM 1 about it we had done the surrogate study and I disclosed  
2 all of that and gave you all the pictures and everything  
3 from the surrogate study.

4 Q But you had formed your opinions in this case before you  
5 conducted your surrogate study hadn't you?

6 A My opinions in my report, yes, I had. The opinions in my  
7 report and then when I went to deposition those opinions  
8 hadn't changed.

9 Q So it's a generally accepted methodology in your field to  
10 conduct surrogate studies. You formed your opinions  
11 without conducting a surrogate study and then only two  
12 and a half weeks later conducted a surrogate study after  
13 you formed your opinions, correct?

14 A After the opinions in the report, correct. Again, it's a  
15 generalized method. It doesn't mean that you are able to  
16 do everything that you want to do.

17 Q Now, Defense Exhibit 313.43 is one of the photos from  
18 that belated surrogate study that you did; correct, sir?

19 A It is.

20 Q Did you ever measure the amount of roof crush according  
21 to Ford witness Colby Swicord?

22 A What's the question?

23 Q The question, sir, is did you ever measure the amount of  
24 roof crush according to Ford witness Colby Swicord that  
25 this jury heard testify this week?

4:45:05PM 1 A Right. I don't recall what he said the roof crush was.  
2 Q Did you read his deposition, sir?  
3 A I did.  
4 Q Do you recall that Mr. Swicord testified that the roof  
5 collapsed to within four to six inches of the console?  
6 A That very well could have been true.  
7 Q Do you recall Mr. Swicord testifying to that when you  
8 read his deposition?  
9 A I did, yes.  
10 Q How much room would your surrogate have had according to  
11 Mr. Swicord's testimony that there was 4-6 inches of roof  
12 crush above the console?  
13 A So if there's 4 to 6 inches above the console, the roof  
14 is not going to deform uniformly. We know that the roof  
15 was at the top of the headrest based on the scene photos  
16 and if it slopes down towards the top, somebody was able  
17 to get through the windshield and check her pulse. So  
18 that would seem tough if the windshield is only about  
19 6 inches high that they could get through there and get  
20 her pulse as Mr. Harrison had testified to.  
21 Q Sir, respectfully, that wasn't my question. My question  
22 is how much room would the surrogate have had if  
23 according to Mr. Swicord's testimony that the roof  
24 collapsed to within 4 to 6 inches of the console? Can  
25 you draw for me on the screen there 4 to 6 inches of roof

4:46:49PM 1

collapse within the center console?

2

A Within the center console or the IP? The instrument panel or the center console? I thought you were talking about the instrument panel.

3

4

5

Q Didn't Mr. Swicord testify that it was the center console?

6

7

A I believe he did.

8

Q He did. Can you draw on the screen what 4 to 6 inches within the center console is?

9

10

MR. BUTLER: Above the center console.

11

Q Above the center console. Thank you.

12

A Above the center console. I can't see the center console.

13

14

Q You inspected the truck. Can you estimate where the center console is?

15

16

A It's going to be at her hips.

17

Q Can you draw on your screen there 4 to 6 inches above the center console?

18

19

A If is the center console isn't in the picture it makes it very difficult to draw a line from the top of the center console. I don't mean to be difficult, but I don't see it.

20

21

22

23

Q I'm asking you to estimate where it is based on your inspection of the truck.

24

25

MS. WRIGHT: Objection, Your Honor, the center

4:47:50PM 1 console was not in the photograph. The witness has said that  
2 three times now. You can't put something on here if it  
3 doesn't exist. If Mr. Prather would like to show another  
4 photograph perhaps he can.

5 MR. PRATHER: Put up Defense Exhibit 313.44, which  
6 has not yet been admitted into evidence Your Honor.

7 BY MR. PRATHER:

8 Q Dr. Sochor, is Defense Exhibit 313.44 a photograph that  
9 you took during your inspection of the truck?

10 A During the surrogate study.

11 Q Sorry, during the surrogate study.

12 A Yes.

13 THE COURT: It's admitted 313.44.

14 Q Dr. Sochor, would you agree with me you can see the  
15 center console in Defense Exhibit 313.44?

16 A I do.

17 Q Can you draw on the screen a direct line 4 to 6 inches  
18 above where the center console is?

19 A Sure. I'm going to use my tape here if it's in plain;  
20 it's going to be about that distance. So it's going to  
21 be about right there.

22 MR. PRATHER: Mr. Gunn, is there a way to do a  
23 screen capture?

24 MR. LOWREY: I talked to Mr. Gunn about this  
25 yesterday. You can photograph what the screen shows and then

4:49:28PM 1 have an electronic record.

2 MR. BUTLER: I'll do it right now.

3 MS. WRIGHT: Your Honor, I would object because this  
4 is misleading; it's two-dimensional not three-dimensional.

5 THE COURT: That objection is overruled.

6 BY MR. PRATHER:

7 Q Sir, isn't it true that you admit the roof crush caused  
8 Mr. Mills to suffer injuries?

9 A Mr. Mills would have interacted with the roof at some  
10 point. I said that he had minor injuries from that  
11 possibly, but he didn't suffer any major injuries from  
12 that. He got his major injuries from the frontal  
13 collision.

14 Q That's not exactly what you told the jury is it, sir?  
15 One of the very first questions that Ford's lawyer asked  
16 you was whether the roof crush did not cause or  
17 contribute to injuries. Isn't it true that you've  
18 admitted that roof crush did cause Mr. Mills to suffer  
19 injuries?

20 A Mr. Mills is in the vehicle. He's entrapped and he's up  
21 against the roof and so he could have gotten minor  
22 bruises and things from that, but any of the fractures or  
23 any of the bony injuries he did not get from the roof.

24 Q You said he was trapped by the roof?

25 A He was upside down in the vehicle and the roof

4:51:08PM 1 deformation, yeah, he couldn't get out of the vehicle on  
2 his own.

3 Q Isn't it true that you testified during your deposition  
4 that he had injuries to his head as a result of the roof  
5 crushing down on him?

6 A I did not. I said that he had injuries to his brain  
7 based on rotation of the skull versus brain in the  
8 frontal collision.

9 Q I didn't write the page number down for the deposition.  
10 I apologize. I will come back to that in a second. Now,  
11 while you were testifying during your direct examination  
12 we went through your extensive CV that sounded like you  
13 were the chief cook and bottle washer up there in  
14 Virginia. How many medical examiners are there for  
15 Albemarle County? You're not the only medical examiner  
16 are you?

17 A There's five.

18 Q Isn't it true that you are not a pathologist?

19 A I'm not a pathologist. I'm an emergency physician.

20 Q And you are not licensed to practice medicine in the  
21 State of Georgia, correct?

22 A I am not, no.

23 Q Isn't it true that you are not a cardiologist?

24 A I'm not a cardiologist. I'm an emergency physician.

25 Q Isn't it true that you are not a radiologist?



4:52:46PM 1 A I'm not a radiologist.

2 Q Isn't it true that you are not a pathologist?

3 A I think I already answered that, but it's true.

4 Q Isn't it true that you are not authorized to perform

5 autopsies?

6 A Correct. I'm not authorized to perform medical legal

7 autopsies; that's correct.

8 Q You didn't attend the autopsy in this case did you, sir?

9 A I did not.

10 Q Did you ask Ford if you could attend the autopsy in this

11 case?

12 A I didn't.

13 Q Did Ford ask you to attend the autopsy in this case?

14 A They didn't.

15 Q Ford has a pathologist, correct?

16 A I believe so, yes.

17 Q Who observed the autopsy in this case, correct?

18 A Correct.

19 Q Is that Dr. Downs?

20 A That's Doctor Jamie Downs, yes.

21 Q And you testified that you are an ER doctor, correct?

22 A I am.

23 Q Would you agree with me that there are plenty of

24 hardworking ER doctors right here in Columbus, Georgia at

25 Columbus Regional, Northside, or St. Francis that Ford

4:53:48PM 1 could've called as an expert witness in this case instead  
2 of flying you down here all the way from Virginia?

3 A I don't know that they have engineering degrees. I don't  
4 know that they have my background. I don't know if  
5 they've studied injury for 30 years.

6 Q Isn't it true, sir, that you're not an expert in  
7 positional asphyxiation?

8 A I don't know that there is an expert in positional  
9 asphyxiation in the world. As I said, they don't have a  
10 defined definition of it so it would be very difficult,  
11 but, no, I am not.

12 Q Isn't it true that you've never published any articles  
13 about positional asphyxiation?

14 A I haven't and when I looked for Dr. Eisenstat chapter  
15 that he talked about I couldn't find that and it has  
16 never been published. So I looked because I wanted to  
17 say what he had said about it, but I couldn't find it.

18 Q You've never authored an article about positional  
19 asphyxiation, correct?

20 A I haven't.

21 Q Isn't it true you've never served as editor of any  
22 article or book regarding positional asphyxiation?

23 A The books that I served as an editor we did not deal with  
24 the issue of positional asphyxiation, no.

25 Q Isn't it true that you have never determined that a

4:55:06PM 1 person's cause of death was from positional asphyxiation?

2 A It's a very rare cause of death and I have not as a

3 medical examiner ever put that diagnosis down.

4 Q Sir, I asked you earlier and Mr. Philyaw got me the

5 citation to the definition. Isn't it true that you admit

6 that roof crush caused Mr. Mills' injuries?

7 A I would have to see the expert from the deposition,

8 please.

9 Q Please put up page 308, lines 23 to 309-5 of Dr. Sochor's

10 deposition. Isn't it true that during your deposition I

11 asked you:

12 Okay, please tell me all of the injuries that

13 occurred to Mr. Mills when the truck pitched over and the

14 roof crushed down.

15 Isn't it true that you responded:

16 So the injuries that could've occurred to Mr. Mills

17 are the cuts on the head and the contusions on the head.

18 Isn't that correct?

19 A A cut and a bruise because he is upside down and he's

20 laying on the roof. The roof is deformed and bent.

21 Q So when you told this jury at the beginning of your

22 testimony that roof crush didn't cause or contribute to

23 Mr. Mills' injuries that wasn't true was it, sir?

24 A If you want to go at the laceration and the bruise I was

25 referring to the major injuries and those were the

4:57:30PM 1

injuries that Mrs. Wright was asking me about.

2

Q Sir, isn't it true that the Ford F250 so called super  
duty had a four star crash rating for front-end crashes?

3

4

A I don't know if that's true or not.

5

Q Isn't it true that during your direct examination you  
testified about something called NCAP?

6

7

A I said 35-mile per hour crash test. I don't know that I  
ever said NCAP.

8

9

Q Are you familiar with the NHTSA NCAP?

10

A I am.

11

12

MS. WRIGHT: Your Honor, I want to object. I think  
we had this problem earlier today. The NCAP was referenced  
during Mr. Burnett's testimony.

13

14

MR. PRATHER: Okay, I thought that it came up during  
Dr. Sochor's testimony.

15

16

BY MR. PRATHER:

17

Q You just testified that you're familiar with the 35-mile  
Delta-V NCAP test, correct?

18

19

A Correct.

20

Q Isn't it true that there's a star rating system that  
NHTSA gives in connection with that 35-mile and hour in  
Delta-V frontal impact test, correct?

21

22

A Correct.

23

24

Q Isn't it true that the star rating for the Ford F250 so  
called super duty that the Mills owned for frontal

25

4:59:10PM 1

collision was a four star rating; isn't that true?

2

A I don't know that that's true or not, but I will take  
3 your word for it.

4

Q I'll represent to you that it is. Isn't it also true  
5 that a four-star front-end crash tests rating means that  
6 a person should only have a 10 to 15 percent chance of  
7 injury in a 35-mile Delta-V frontal collision?

8

A I'd have to see the NCAP chart. There's a graph that has  
9 a X and Y axis on it and it has got the bands and it has  
10 got the stars in it.

11

Q Are you familiar with the NHTSA document describing the  
12 NCAP test?

13

A I am. I don't have it memorized.

14

Q We've got a copy of it. Will you put up Plaintiffs'  
15 Exhibit 597, page 4? Dr. Sochor, do you recognize  
16 Plaintiffs' Exhibit 597 as the document titled resources  
17 related to NHTSA's new car assessment program; which is  
18 otherwise called the NCAP?

19

A That's the title of the document, yes.

20

Q Page 4. Does page 4 describe that star rating system  
21 that you said you were familiar with?

22

A It does.

23

MR. PRATHER: Your Honor, we would move to tender  
24 Plaintiffs' Exhibit 597 into evidence.

25

MS. WRIGHT: Your Honor, I have no objections to

5:02:35PM 1 illustrative, but it's otherwise hearsay.

2 MR. PRATHER: It's a government record created by  
3 the Department of Transportation Your Honor.

4 MS. WRIGHT: That doesn't resolve the hearsay issue  
5 Your Honor. I have no objection. I'm not sure whether this  
6 is Mr. Prather's witness or Mr. Lowrey's but I have not  
7 objection to him showing this to the witness and using it as  
8 an illustrative; it just isn't admissible.

9 MR. LOWREY: Doesn't show a government rating system  
10 rather than assert a fact?

11 MR. PRATHER: I'm fine with showing it as an  
12 illustrative exhibit, Your Honor.

13 THE COURT: Okay, it's admitted for illustrative  
14 purposes.

15 BY MR. PRATHER:

16 Q Dr. Sochor, you testified earlier that you are familiar  
17 with NHTSA NCAP star rating systems, correct, for frontal  
18 collisions?

19 A Yeah. I know of the star rating system, yes.

20 Q Isn't it true that to get a four star rating, which the  
21 jury can see here on the screen what that means is that  
22 in a 35 mile-per-hour Delta-V frontal impact collision  
23 there has to be only a 10 to 15 percent chance of serious  
24 injury; isn't that true?

25 A There has to be. As star system is that there would be

5:04:07PM 1

that a chance of serious injury if they potentially got a four-star; it's not guaranteed. It could be higher. It could be lower.

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Q To be a four-star NCAP rated truck there can be no greater than a 15 percent chance of serious injury, correct?

A So I think that the star rating means that if you got a four-star there is a 10 to 15 percent chance of a serious injury.

Q So that means an 85 percent chance or a 85 to 90 percent chance of no serious injury, correct?

A Correct.

Q And when we are talking serious injury we are talking the AIS3 or above injuries that you testified about during your direct examination, correct?

A Correct.

Q Isn't it true that the Delta-V for the frontal impact in the Mills wreck was less than 35 miles per hour, correct?

A It may have been a little bit less than 35 miles per hour.

Q It was 34.77, correct?

A Right.

Q Under your theory about the forces involved, isn't it true that Mills should have had at most a 10 to 15 percent chance of serious injury in this frontal

5:05:33PM 1

impact?

2 A No. The serious injury crash test dummies are based on a  
3 44-year-old male, a 50th percentile dummy is 5'8" weighs  
4 175 pounds. And so if you take a healthy 44-year-old  
5 male and put them in a vehicle, that's what that crash  
6 rating system means. That's what it's based on. It's  
7 not based on a 74-year-old man with COPD or a 64-year-old  
8 woman.

9 Q Has Ford's lawyers shown you the window sticker Ford put  
10 on the Mills' truck showing the four-star rating that  
11 this truck had?

12 A No.

13 Q When the Mills bought this truck weren't they told that  
14 this truck had a four-star rating in frontal impact?

15 A I do not know what the Mills were told when they bought  
16 the truck.

17 THE COURT: Closing in on the finish line  
18 Mr. Prather.

19 MR. PRATHER: I am, Your Honor. Plaintiff Exhibit  
20 14A just for illustrative purposes.

21 BY MR. PRATHER:

22 Q Can you see that document on your screen?

23 A I see a window sticker, yeah.

24 Q This is the Ford document, correct?

25 A Correct.



5:07:12PM 1

Q This is the Ford window sticker that was on the Mills truck when they purchased it, correct?

2

3

A I don't know that anybody knows that the sticker was on there. I assume that they looked at the sticker. I will go with that.

4

5

6

Q Do you see that there is a four-star rating for frontal impact?

7

8

A Yes.

9

10

Q And that's the four-star rating that we were talking about earlier, correct? Meaning that there should be no more than a 10 to 15 percent chance of serious injury in a 35-mile Delta-V frontal collision, correct?

11

12

13

A Representing a 44-year-old male who is perfectly healthy, yes.

14

15

Q That isn't stated anywhere on this document is it, sir?

16

A It's not.

17

18

Q Isn't it true you served your expert report in this case on April 15<sup>th</sup>, 2024?

19

A Yes.

20

21

Q Isn't it true that you personally signed that expert report?

22

A Yes.

23

24

25

Q You testified earlier today that the abbreviated injury score or AIS is a system that is used to classify and describe the severity of injuries, correct?

5:08:59PM 1

A Correct.

2 Q Isn't it true that it's a scale that goes from one to six  
3 with one being mild, three being serious, and six being  
4 fatal?

5 A Correct.

6 Q Isn't it true that your expert report contains a chart  
7 stating that Mrs. Mills had an AIS injury score of three  
8 to her head/neck?

9 A Right. I corrected that in my deposition and said that  
10 that was an error. She didn't have any of those. If you  
11 look at the text of my report she only had ones and twos  
12 on her head so that was an error and I corrected that  
13 that in my deposition.

14 Q Plaintiffs' Exhibit 310, page 10. Do you recognize  
15 page 8 as a page from your expert report in this case?

16 A I do.

17 MR. PRATHER: We would move to tender Defense  
18 Exhibit 310 as an exhibit purely for illustrative purposes.

19 THE COURT: All right.

20 MS. WRIGHT: I think this is the page Dr. Sochor  
21 indicated previously, correct? I have no objection.

22 THE COURT: It's admitted for illustrative purposes.  
23 BY MR. PRATHER:

24 Q Isn't it true Dr. Sochor that you put in this chart that  
25 Mrs. Mills had a head/neck AIS score of three, correct?

5:10:59PM 1

A Correct.

2 Q And isn't it true that's a big problem for Ford since  
3 Ford told this jury -- And an AIS3 injury to your head  
4 and neck is a serious injury, correct?

5 A I corrected this. If you look at the injuries that are  
6 listed above and the AIS is actually the number after the  
7 DOT code. It had gotten transferred over for Mr. Mills  
8 and it became a three. It was supposed to be a two. I  
9 had rectified this in my deposition. There is a three on  
10 there but that's a mistake and I corrected that in my  
11 depo. If you look at the verbiage and the injuries that  
12 were coded there is no three in the head.

13 Q Isn't it true that during your deposition you blamed your  
14 wife for making that mistake?

15 A And I don't want to do it again but, yes. My wife had  
16 transferred it over and I would rather take the hit than  
17 her.

18 Q Dr. Sochor -- I am almost done Your Honor. Sir, isn't it  
19 true that the autopsies in this case occurred on August  
20 2-3, 2023?

21 A I believe that's correct.

22 Q You weren't present at the autopsies, correct?

23 A I was not.

24 Q But Ford's pathologist Dr. Downs was present during those  
25 autopsies, correct?

5:13:34PM 1 A That is my understanding, correct.

2 Q Isn't it true that during the autopsy Dr. Downs didn't  
3 say anything about a heart attack or a sudden cardiac  
4 event?

5 MS. WRIGHT: Objection, lack of foundation, Your  
6 Honor.

7 THE COURT: Overruled. He can ask him if he knew  
8 about that.

9 A I don't know what he said there. I didn't review all of  
10 the video. I looked at the pictures. I don't know what  
11 Dr. Downs said at the -- I wasn't there so I don't know  
12 how I would know what he said when he was there.

13 Q Have you read Dr. Downs' deposition?

14 A I have.

15 Q Isn't it true that you served your expert report on  
16 April 15<sup>th</sup>, 2024?

17 A Yes.

18 Q Isn't it true that between these two dates Dr. Eisenstat  
19 served an expert report on February 15<sup>th</sup>, 2024?

20 A I will take your word for it, but yeah that sounds right.  
21 It was before our reports were due.

22 Q And you've reviewed that report, correct?

23 A I did.

24 Q When after the autopsy on August 2<sup>nd</sup> and August 3<sup>rd</sup>,  
25 2023, did you come up with the idea that Mrs. Mills had a

5:15:38PM 1

sudden cardiac event?

2 A It wasn't the autopsy as much as the radiology that was  
3 done. So they had done a CT scan of the bodies and they  
4 had done an MRI of Mrs. Mills.

5 Q Isn't it true that you are the one who came up with this  
6 idea that Mrs. Mills had a sudden cardiac event?

7 A Based on all the information I had, yes, she had a  
8 cardiac event.

9 Q So Dr. Downs who goes to the autopsy on August 2<sup>nd</sup>,  
10 2023 -- Dr. Downs is a pathologist, correct?

11 A He is.

12 Q He doesn't mention anything at the autopsy about a sudden  
13 cardiac event, correct?

14 A I don't know. I wasn't there.

15 Q And yet it was you an ER doctor who is not a forensic  
16 pathologist who testifies for automakers all the time who  
17 came up with this idea that Mrs. Mills had a sudden  
18 cardiac event, isn't that true?

19 A There were many doctors and calls. That is the  
20 conclusion we came to based on the traumatic injuries  
21 that weren't there. Based on as I testified earlier no  
22 input into the vehicle going off the road, launching it  
23 into the air. Unfortunately, Mrs. Mills is dead like  
24 five minutes after this all occurred, but there's not a  
25 traumatic injury to explain that.

5:17:23PM 1

Q These calls that you're talking about, what you're  
2 talking about is a layer engineering conference or a LEC;  
3 correct?

4 A Yeah. When the other doctors and experts are on the  
5 call.

6 Q And the other doctor who was on the lawyer engineering  
7 conference in which you came up with the idea Mrs. Mills  
8 had a sudden cardiac event was Dr. Raphael, isn't that  
9 true?

10 A Dr. Raphael was on the call also, so was Dr. Downs, and  
11 so was Dr. Camacho.

12 Q Please put up Mark Sochor's deposition at page 102  
13 lines 10 through pages 103, 7.

14 MS. WRIGHT: Your Honor, if this is for impeachment  
15 then I think it should be clear impeachment. The page they  
16 are showing us is not.

17 MR. MALEK: I haven't seen anything yet. I don't  
18 know what he's pointing him to.

19 MR. PRATHER: Your Honor, I'm going to call it a day  
20 right there.

21 THE COURT: Okay. Redirect.

22 MS. WRIGHT: Yes, Your Honor, very short.

23 REDIRECT EXAMINATION

24 BY MS. WRIGHT:

25 Q Dr. Sochor, are you familiar with HIPAA?

5:19:10PM 1

A I am.

2 Q And what is it HIPAA?

3 A HIPAA is the Health Information Protection Act so you  
4 don't want in public record people's medical information.  
5 Supposedly the act came from somebody was selling  
6 patient's information that had a certain type of cancer  
7 and they were recruiting people to take certain  
8 medications and things. So they thought that that was a  
9 violation; that everybody should have their privacy to  
10 themselves and so they came up with HIPAA.

11 Q So if we wanted to obtain for example Mrs. Mills' medical  
12 records we have to sign a release that we won't disclose  
13 them outside of this litigation, correct?

14 A Correct.

15 Q Have you ever in a lawsuit when you've been retained by  
16 the defendant picked up the phone and called the doctor  
17 for the plaintiff on the other side?

18 A No.

19 Q Would you do that?

20 A No, I would not.

21 Q With respect to Dr. Ellis who was that cardiologist, how  
22 many years before the accident had he last seen her?

23 A I believe it was several.

24 Q Do you know whether Dr. Ellis was even aware that she had  
25 been hospitalized with chest pains in the month or two

5:20:33PM 1

before her accident?

2 A I don't believe he was.

3 Q There was something written up here that Mr. Prather  
4 wrote about no clinical testing and enlarged heart, did  
5 you review the medical records for Mrs. Mills?

6 A I did.

7 Q Were there any reference by Mrs. Mills or anyone else to  
8 the reference to an enlarged heart?

9 A In 2014 there was a reference to an enlarged heart.

10 Q Now, this 4 to 6 inches over the console. Do you know  
11 what part of the console Mr. Swicord is referring to?

12 A I don't.

13 Q That line the two-dimensional photograph will you tell me  
14 if that's a four to six or so for the part of the console  
15 he's referring to?

16 A I don't.

17 Q You were drawing on that line that two dimensional  
18 photograph. Can you tell me do you know whether that is  
19 actually 4 to 6 or whether it's actually over the part of  
20 the console he was referring to?

21 A I don't.

22 Q Would you defer to Dr. Vogler as to what the roof looked  
23 like internally, what you couldn't see instead of a  
24 witness as the scene?

25 A Yes. I was just doing as I was told.



5:21:32PM 1 Q All right, with respect to the NCAP test you were saying  
2 that it's based up on a 50th percentile male who is a  
3 44-year-old?  
4 A Yes.  
5 Q This 10 to 15 percent of serious injuries, are people who  
6 are 74 in compromised health or 64 and in compromised  
7 health at a greater risk of injury in an accident?  
8 A They are.  
9 Q And di Mr. and Mrs. Mills see only this one 35-mile-per  
10 hour Delta-V impact?  
11 A No, they saw the second impact also.  
12 Q Did they also see a pitchover?  
13 A And the pitchover, yes.  
14 Q Is the movement in that pitchover the same as the  
15 movement in a rollover or a frontal?  
16 A It is not. No, the rollover that I believe that NHTSA is  
17 rating is the rollover that we talked about that rolls  
18 like a football down the road.  
19 Q Not what we had in this case, correct?  
20 A Not like what we had in this case, no.  
21 Q Is your opinion regarding Mrs. Mills having a cardiac  
22 event that led her to be unconscious and leave the road  
23 an idea you just came up with?  
24 A No. Obviously we looked at all the aspects. We were  
25 looking for a traumatic injury so that's why we wanted to

5:22:48PM 1 have radiology. We wanted to have the -- When we had  
2 heard that they were going to exhume the bodies and do an  
3 autopsy that's why we asked to have radiology. We wanted  
4 to look at the injuries and that way we would be able to  
5 look at the injuries and possibly explain why she had  
6 died so suddenly. She died so suddenly within minutes of  
7 this crash.

8 Q Did you come to this opinion after looking at the  
9 radiology, and the medical records, and the accident  
10 information and everything else you considered in this  
11 case?

12 A Yes.

13 MS. WRIGHT: Thank you.

14 THE COURT: Recross.

15 MR. PRATHER: Very briefly Your Honor.

16 RECCROSS EXAMINATION

17 BY MR. PRATHER:

18 Q Isn't it true that the sons of Mr. and Mrs. Mills  
19 executed a HIPAA release so that Ford could obtain their  
20 medical records in this case?

21 A I am not aware of that. I got the medical records but I  
22 don't know about the HIPAA release.

23 Q You're a doctor. You know that the only way you could've  
24 seen their medical records is if an authorized  
25 representative of the estate of Mr. and Mrs. Mills had

5:23:49PM 1

signed a HIPAA release, correct?

2

A I would hope so, yes.

3

Q Did you ask Ford to ask us if you could call Dr. Ellis?

4

A No.

5

Q Isn't it true that we asked Dr. Ellis to sit for a

6

deposition taken by Ford's lawyers when Ford's lawyer

7

asked us to do that?

8

A I saw Dr. Ellis's deposition so I assume that's how it

9

happened.

10

Q Did you read Dr. Ellis's deposition?

11

A I did.

12

Q And you inspected the truck and conducted an exemplar for

13

your surrogate study, correct?

14

A Yes.

15

Q Isn't it true that the top of the center console was

16

flat?

17

A The top of the center console is flat.

18

Q No further questions Your Honor.

19

THE COURT: All right, sir, you are excused. You

20

may go. Who is your next witness Ms. Wright?

21

MS. WRIGHT: Your Honor, Ford will rest. Thank you.

22

THE COURT: All right, Ford rests. Does the

23

Plaintiff have any rebuttal?

24

MR. BUTLER: Yes, sir, very briefly.

25

THE COURT: Call was your rebuttal witness.

5:25:16PM 1

MR. BUTLER: We call Mr. Jason Mills Your Honor.

2

THE COURT: All right Mr. Jason Mills, come to the witness stand please. Ladies and gentlemen as I think I told you a couple of weeks ago that the Defendant when they rest, the Plaintiff then can put up rebuttal evidence if they want to and then once that rebuttal is over you will have all the evidence you are going to hear unless the Defendant puts up surrebuttal evidence, but you'll see. Go ahead Mr. Butler.

9

You've already been sworn in your case so I am just going to tell you today you're under that same oath to tell the truth.

12

THE WITNESS: Yes, sir.

13

JASON MILLS

14

Whereupon, witness having been duly sworn,

15

testified as follows:

16

DIRECT EXAMINATION

17

BY MR. BUTLER:

18

Q Mr. Mills, did you ever see your mother Debra Mills wearing a seatbelt under her arm?

19

20

A No, sir.

21

Q Have you ever heard of anybody who ever saw your mother Debra Mills wearing her seatbelt under her arm?

22

23

A No, sir.

24

Q What would your father Herman Mills have said if she tried to do that based on your experience?

25

5:26:12PM 1 MR. PEELER: Your Honor, objection. That's pure  
2 speculation. What would your father have said; that's  
3 speculation.

4 MR. BUTLER: I don't believe it is, Your Honor.

5 THE COURT: That's sustained.

6 BY MR. BUTLER:

7 Q What was your father's view about wearing seatbelts?

8 MR. PEELER: Your Honor, I object again --

9 THE COURT: That's overruled. He can ask him his  
10 father's --

11 A When you got in a vehicle with my father that's the first  
12 thing he said was buckle up.

13 Q What as your father's view about safety in general?

14 A Growing up being in constriction and workforce safety is  
15 first; that's with anything.

16 Q You've been here and you've listened to the testimony.  
17 You understand that Ford had lawyers and investigators  
18 down in Bainbridge and in Decatur County Georgia talking  
19 to scene witnesses. You heard about that haven't you?

20 A I've been here. I heard about that.

21 Q Have you heard from anybody in the world that any of  
22 these Ford lawyers an investigators that were down there  
23 in Bainbridge in Decatur County Georgia ever asked any of  
24 the people who knew Debra Mills if they'd ever seen her  
25 wear her seatbelt under her arm?

5:27:20PM 1

A Not that I am aware of.

2 MR. PEELER: Objection, that's hearsay.

3 THE COURT: Sustained.

4 MR. PEELER: Thank you.

5 BY MR. BUTLER:

6 Q There was a statement by this last witness for Ford Motor  
7 Company about your father Herman Mills having a "tiny  
8 bleed in his head and no head injury from the roof  
9 crush". What did your father's head look like during  
10 those nine days he was the hospital in Tallahassee before  
11 he died?

12 A It was probably three times the size of his normal head  
13 swole.

14 Q Is that something you saw with your own eyes?

15 A Yeah, I saw it every day for nine days.

16 Q Thank you Mr. Mills.

17 MR. BUTLER: Thank you, Your Honor.

18 THE COURT: Any cross?

19 MR. PEELER: No, Your Honor.

20 THE COURT: Sir, you may step back. Any other  
21 rebuttal Mr. Butler?

22 MR. BUTLER: No, Your Honor. Although we do need to  
23 tender an exhibit and we've got the photograph of Defense  
24 Exhibit 313.34 and we will produce it to Ford tonight. I've  
25 already e-mailed it to Ms. Andrews; and we will label that

5:28:31PM 1 Plaintiffs' Exhibit 313.34 so it has got the same number.  
2 Plaintiffs' Exhibit 313.34. We tender that into evidence.  
3 It's just a photograph of Dr. Sochor's line showing what he  
4 says is the 4 to 6 inches above the console.

5 MS. WRIGHT: No that would be illustrative, Your  
6 Honor.

7 MR. BUTLER: No, we're tendering it into evidence  
8 Your Honor for the jury to take when they see them. We think it needs  
9 to go to the jury room.

10 THE COURT: What's the objection?

11 MS. WRIGHT: Your Honor, first of all, to date none  
12 of these have come in and any annotation on any piece of  
13 exhibit has been removed at the Plaintiffs' request. So if we  
14 are going to go and put annotations back we're putting all of  
15 Dr. Vogler's annotations --

16 THE COURT: I'm going to admit it for illustrative  
17 purposes and counsel can show it to the jury during closing  
18 arguments, but it will not go out with the jury.

19 MR. BUTLER: Thank you, Your Honor.

20 THE COURT: Anything else Mr. Butler?

21 MR. BUTLER: No, sir.

22 THE COURT: Any surrebuttal?

23 MS. WRIGHT: No, Your Honor.

24 THE COURT: Okay, ladies and gentlemen. You get to  
25 go home early this evening, but rest up because you may be

5:29:35PM 1 here late to tomorrow. What will happen in this morning is we  
2 will come back at 9:00 a.m. and the lawyers will give their  
3 closing arguments where they will argue to you what they think  
4 the evidence has shown and why they think it has not shown and  
5 why they think you should side with them or not. Then I will  
6 give you instructions on the law and then you'll begin your  
7 deliberations, your discussions about the case in hopes of  
8 reaching a verdict in the case.

9 So as far as how long you'll have to reach a verdict  
10 that's really up to you. How long it takes. If we get to the  
11 end of the day and you still have not reached a verdict but  
12 you think you're making progress and you'd like to stay later  
13 than we normally stay then I will certainly let you do that.  
14 We will stay here with you if you want to do that. You may  
15 want to tentatively prepare just in case that happens.

16 Once we should be able to get the case to you with  
17 my instructions and with the argument by lunchtime. So once  
18 we allow you to deliberate we can buy your lunch, mainly  
19 because we don't want you to leave the courthouse. We want  
20 you to stay upstairs and eat lunch while you're working. We  
21 can't buy you a fancy lunch so this is what we're going to do.  
22 If you don't like the lunch we're going to bring you then you  
23 are on notice to bring your own lunch.

24 We are going to bring in a bunch of Chick-fil-A  
25 sandwiches and some potato chips, that's as good as we can do.



5:31:07PM 1 If we get anything fancy Mr. Trump or Mr. Musk will get on us  
2 for wasting taxpayer money so this is about as good as we are  
3 going to be able to do. So just know that you will have that  
4 for lunch and if that's not going to fit within your dietary  
5 requirements, maybe you can bring your lunch. But I think it  
6 would be better for you to have your lunch here so you can  
7 continue to discuss during your deliberations and get this  
8 matter decided.

9 All right, although you've got all the evidence you  
10 still should not discuss the case with anyone. Don't let  
11 anybody discuss it with you. Don't do any independent  
12 investigation. Your verdict has got to be based solely on  
13 what you've heard in this courtroom during this trial. So you  
14 may go at this time. We will see you at 9:00 a.m. in the  
15 morning. Have a good evening.

16 [JURY EXITS COURTROOM]

17 THE COURT: All right, to preserve the record does  
18 anybody want to put a motion on the record or not now that the  
19 all of the evidence is in? You can be seated. Who has got a  
20 motion? Mr. Eady.

21 MR. EADY: Yes, Your Honor. Ford Motor Company has  
22 renewed its motion for judgment as a matter of law. As the  
23 Court recalls, at the close of Plaintiffs' case Ford moved for  
24 a judgment as a matter of law on Rule 50. The Court denied  
25 portions of that or deferred ruling. Earlier today the Court

5:33:02PM 1 granted the motion with respect to Plaintiffs' failure to warn  
2 claims.

3 Ford Motor Company has now renewed its motion with  
4 respect to the rest of the claims that's based upon the  
5 evidence that has been presented during the entirety of the  
6 trial so the Court can look at certain of these issues, all of  
7 the evidence at once. We can put that in a written motion and  
8 we would rely upon the written motion.

9 THE COURT: All right, response briefly.

10 MR. LOWREY: Certainly, it will be very brief. If  
11 there's an issue that you are contemplating granting judgment  
12 on I am happy to address it.

13 THE COURT: There is not.

14 MR. LOWREY: Excellent. As far as the written brief  
15 filed I would prefer not to have team members tied up writing  
16 a written response if you don't need it.

17 THE COURT: I'm fixing to rule from the bench. I  
18 have sat through the whole trial. I think I know the legal  
19 issues and the factual issues.

20 MR. LOWREY: I'm sitting down.

21 THE COURT: The Court finds that there are genuine  
22 factual disputes to be resolved by the jury as to all of the  
23 remaining claims and therefore this case is not one the Court  
24 finds should be decided as a matter of law. Consequently the  
25 motion for judgment as a matter of law is denied in its

5:34:21PM 1 entirety, except for the Court's earlier ruling today that the  
2 failure to warn claim is no longer in the case. The Court did  
3 rule as a matter of law that that claim is not in the case  
4 based on a lack of proximate cause. All right, anything else  
5 we need to take up before you all argue it in the morning  
6 Mr. Butler, an hour and 15 minutes for opening and close?

7 MR. BUTLER: Yes, sir, that will be fine. Thank you  
8 very much.

9 THE COURT: Defendant an hour and 15 minutes. Is  
10 one person going to do it or are you going to spilt it up?  
11 You're going to do it okay. Yes, sir.

12 MR. LOWREY: We have to comments on the revised jury  
13 instructions. For the record we renewed our objection to you  
14 refusing to charge request to charge one and two.

15 THE COURT: Yes, sir.

16 MR. LOWREY: I know that's not going anywhere. But  
17 we particularly ask you to reconsider your denial of request  
18 to charge number 19, which is failure to call a witness and  
19 the presumption that follows therefrom. That is now very  
20 well-adjusted to the evidence of the case as they have not  
21 called Dr. Downs or any Ford expert who attended the autopsy.

22 THE COURT: All right.

23 MR. LOWREY: And under Federal Rule of Evidence 302  
24 in a civil case state law governs the effect of a presumption  
25 regarding a claim or defense for which state law supplies the

5:35:38PM 1 rule of decision.

2 THE COURT: You want to address that issue  
3 Mr. Melton?

4 MR. MELTION: Yes, Your Honor. As you said last  
5 night, first of all, their motion is based on a notion that  
6 there is an essential witness. There is no law that makes  
7 that requirement that they are basing their motion on; and  
8 absent such a requirement there's no justification for such an  
9 instruction. Secondly, they've got access but as you know  
10 they assumed their abilities to subpoena witnesses and that  
11 rule is based on lack of equal access to a particular witness.

12 MR. LOWREY: I don't know that we have any power to  
13 compel a Ford paid expert to testify.

14 THE COURT: Let me ask you this Mr. Lowery. Is  
15 there anything that would have prevented you from playing or  
16 reading the deposition of Dr. Downs in your rebuttal?

17 MR. LOWREY: I don't know of anything that would  
18 have prevented that.

19 THE COURT: Would that not make him available for  
20 the purposes of this legal principle to the Plaintiffs?

21 MR. LOWREY: I don't think so, Your Honor.

22 MR. BUTLER: I think we would have had an objection  
23 to every question as leading.

24 THE COURT: Well, I don't think so is not comforting  
25 to me as far as putting something like that as potential error

5:37:07PM 1 in the case. I'm not going to give the instruction.

2 Mr. Butler can argue him not being here and what he thinks  
3 that means, but I'm not going to give the instruction.

4 MR. LOWREY: Heard, Your Honor, and I know you are  
5 launching yourself up out of your chair. I have one request  
6 on the instructions. At the top of page 18, charge number 10;  
7 would describe Ford's contributory negligence defense or fault  
8 or whatever it's called these days under Georgia law? Page 18  
9 does correctly reflect that Ford's contention is that she was  
10 negligent "for causing the wreck". Given the massive amount  
11 of attention seatbelts have received this week, we would  
12 request that you clarify something like Ford Motor Company  
13 does not contend that the manner in which Debra Mills wore her  
14 seatbelt was a proximate cause of either her injuries or her  
15 death. And maybe they don't have any objection to that. So  
16 maybe I will stop talking to hear what they say, but I've got  
17 more thoughts on that.

18 MR. MELTION: Could you read the language again,  
19 please?

20 MS. WRIGHT: Your Honor, just to be clear, the way  
21 she wore her seatbelt is what gave her the constellation of  
22 injuries she got. We have not contended that had she worn it  
23 properly she would have gotten injuries that way too. So the  
24 way she wore her seatbelt got her those particular injuries;  
25 it did not lead to her death. We are not suggesting that, but

5:38:27PM 1 had she worn it this way she would have gotten different  
2 injuries.

3 MR. MELTION: We would pose a charge along those  
4 lines to the extent that it would suggest that that's where  
5 our position is.

6 MS. WRIGHT: We don't intend to argue she was  
7 negligent for the way she wore her seatbelt. We simply say it  
8 explains the injury pattern.

9 MR. LOWREY: The thing about that is we have heard  
10 so much evidence about seatbelts. We brought it up because we  
11 knew they were going to. I'm still at a complete loss to  
12 understand the relevance to any of it. I think we heard  
13 Ford's counsel acknowledge there's no evidence that her  
14 injuries were any worse than they would have been had she been  
15 wearing her belt here and here, but certainly it can't  
16 possibly be a cause of her death or Mr. Mills' pain and  
17 suffering or death. And we've got to know that if they put  
18 contributory fault on that verdict form, that they weren't  
19 thinking seatbelts. You've been careful, Your Honor, to be  
20 sure the jury is not confused about what claims are in the  
21 case. You had us stand up and volunteer, correctly so, that  
22 we don't have a seatbelt claim. There is a massive risk of  
23 jury confusion given the attention this issue has received.

24 THE COURT: Run me a copy. I don't even have a copy  
25 of the instructions here in front of me.

5:39:43PM 1 MR. MELTION: Your Honor, I would again say that in  
2 light of the closing arguments that we anticipate that's a  
3 charge we've had a problem with, the solution without a  
4 problem. And I do believe that it would highlight what we're  
5 not arguing if you gave that charge.

6 MR. LOWREY: I mean the problem is caused by the  
7 massive focus on the trial testimony. The jury is going to be  
8 left to speculate what in the world seatbelts have to do with  
9 this case if it's not to show that she somehow hurt herself or  
10 caused injury to herself by the way she wore it. And if you  
11 just say it in the charge in passing, it's not going to  
12 highlight anything or ring any bell. But for us to say Ford  
13 doesn't contend in closing -- For us to say Ford doesn't  
14 contend that her seatbelt caused her death or injuries that's  
15 different.

16 THE COURT: The problem is Ford does contend that  
17 the seatbelt wearing is relevant to their defenses as to how  
18 she moved in the vehicle.

19 MS. WRIGHT: Correct.

20 THE COURT: So it would be inappropriate for me to  
21 send the message that seatbelts are completely irrelevant.

22 MR. LOWREY: Agree, but it's not a basis for Ford's  
23 contributory negligence defense.

24 THE COURT: What the charge says currently is that  
25 Ford Motor Company contends that Debra Mills was responsible

5:41:17PM 1 for causing the wreck and that she was responsible for the  
2 injuries she and Mr. Mills suffered. This is an affirmative  
3 defense so that makes it clear that the basis for contributory  
4 negligence is their contention that she caused the wreck.

5 MR. LOWREY: Could we say sole basis? Is there room  
6 to put that in?

7 THE COURT: That then is contradictory to the  
8 comparative fault aspect where they can find that she's not  
9 the sole basis but that she is a percentage at fault.

10 MR. LOWREY: I see what you mean.

11 THE COURT: That could be confusing. I think this  
12 is clear. Do I have Ford Motor Company's contention correct  
13 here as to your contributory negligence contention Ms. Wright  
14 that Ford Motor Company with regard to contributory  
15 negligence; is the contention that Debra Mills was responsible  
16 for causing the wreck?

17 MR. BOORMAN: Your Honor, I don't want to contradict  
18 anything that was done last night, but I think the evidence is  
19 Mr. Buchner has testified that she intentionally drove off the  
20 road. So it's not just Ford. It is the Plaintiffs'  
21 contention; it is the parties contention --

22 THE COURT: That's not what I am asking you. What I  
23 am asking you is whether Ford's contention with regard to  
24 contributory and comparative negligence is that she was  
25 responsible for causing the wreck in the first place; that's



5:43:02PM 1 the contention.

2 MS. WRIGHT: Yes.

3 THE COURT: Okay, well then that's accurately  
4 stated. There's not a contention that she was contributorily  
5 negligent by wearing her seatbelt under her arm as far as the  
6 contributory negligence defense is concerned, correct?

7 MR. MELTION: That's my understanding Your Honor.

8 THE COURT: My understanding of the underarm  
9 businesses is that it went to the kinematics -- whatever the  
10 word is -- how she moved, and how she got the injuries, and  
11 the extent of the injuries; that's the purpose of that  
12 evidence.

13 MS. WRIGHT: She got the injuries because of the way  
14 she wore her belt; that's the testimony. I don't know what  
15 else to say.

16 THE COURT: But you're not contending that she was  
17 contributorily negligent by not wearing the belt properly.

18 MS. WRIGHT: The extent she gest those injuries --  
19 She would not have had those particular injuries if she had  
20 worn her belt properly. If they are going to claim those  
21 injuries are, in fact, what led to her death then yes. But we  
22 obviously have very different views on cause of death here.  
23 But if they are going to claim that the injuries she got, the  
24 torso injuries, because she wore it under her arm are what  
25 caused her death then, yes, we have a contrib claim on that.

5:44:26PM 1 MR. LOWREY: We are not claiming that the injuries  
2 she suffered from wearing the belt -- We are not seeking any  
3 pain-and-suffering on that.

4 THE COURT: This is the point. I understand you may  
5 be making that argument with regard to whether or not there  
6 was proximate cause between the roof crush and those injuries,  
7 but my question is as I understand it you don't contend and  
8 you don't plan to tell this jury that even if you find she was  
9 not negligent driving off the road, she was negligent for not  
10 properly wearing her seatbelt; and therefore if you find that  
11 to be the case you should reduce her damages because of her  
12 degree of comparative fault. Are you contending that or not?

13 MS. WRIGHT: It's sort of a chain of events, Your  
14 Honor. We believe she had a cardiac event that caused her  
15 death. If they don't agree and that she intentionally drove  
16 off the road and had this --

17 THE COURT: Do you contend she was contributorily  
18 negligent by wearing her seatbelt improperly?

19 MS. WRIGHT: If she didn't have a cardiac event  
20 then, yes. If she had a cardiac event then it doesn't matter.

21 THE COURT: Okay, you do contend that then.

22 MS. WRIGHT: Only because they are claiming that the  
23 injuries she got in the accident were caused by the roof.

24 THE COURT: Okay, well, that's new to me. I thought  
25 the contention was of contributory negligence was unrelated to

5:45:51PM 1 the seatbelt and was related to her driving off the road.

2 MR. LOWREY: There's a good reason you think that  
3 because it always has been. To be clear Your Honor, we're not  
4 seeking damages for pain and suffering from any injuries until  
5 the roof landed on the ground.

6 THE COURT: Well, they contend that now, apparently  
7 from what I am hearing, they contend that in addition to their  
8 alternative theory if they don't find that she had a heart  
9 attack is that she was negligent in running off the road;  
10 that's what I thought was the theory all along. Now I am  
11 hearing that if they don't think she was negligent for running  
12 off the road, she was negligent for the way she wore her  
13 seatbelt and that should be used for comparative thought  
14 purposes --

15 MS. WRIGHT: Your Honor, I will make it simple. She  
16 had a cardiac event and ran off the road; that's what I am  
17 going to argue to this jury tomorrow. And I'm going to argue  
18 that her injuries which occurred shortly before she died from  
19 the cardiac event were caused by the way she happened to wear  
20 her seatbelt in the frontal collision; that's what we are  
21 going to argue.

22 MR. BUTLER: That's comparative negligence and  
23 comparative fault.

24 MS. WRIGHT: Well, no, because Mr. Butler you're  
25 claiming she got them from the roof. So if the jury finds

5:47:06PM 1

there's no --

2

THE COURT: All right, let's just say this is their argument.

3

4

MS. WRIGHT: We are fine with the instruction the way it is.

5

6

THE COURT: Let's say this is their argument, why are they precluded from making it as far as the seatbelts? Why would they be precluded from making it?

7

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MR. LOWREY: I will absolutely answer the Court's question. I think that we just may have reached an agreement to leave it as is; is that --

10

11

12

THE COURT: If you all can agree to leave it as is we will go with that.

13

14

MR. LOWREY: We agreed, Your Honor, and I regret and sincerely apologize to everyone for delaying their dinner.

15

16

MS. WRIGHT: We say leave the charge as is.

17

18

MR. LOWREY: Yes.

19

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MS. WRIGHT: We vote leave the charge as is.

21

22

THE COURT: Okay, then. We're going to leave it as is Mr. Butler.

23

24

MR. BUTLER: Well, lead counsel hasn't really followed this argument and I need to talk to Mr. --

25

THE COURT: This argument has done nothing but confuse.

MR. LOWREY: And I am to blame --

5:47:59PM 1 THE COURT: All right, what else? Was there  
2 something else on the charge?

3 MR. LOWREY: No, Your Honor.

4 THE COURT: You wanted to be heard on something else  
5 on the charge Mr. Melton?

6 MR. MELTION: I have one item on the charge that I  
7 am reluctant to bring up because I don't even know if it's a  
8 big deal or not. I'm just unsure and I want to raise it to  
9 the Court's attention. It relates to charge number 8,  
10 page 13. It talks about causation of death and the third way  
11 there can be a causation of death is if the events  
12 significantly sped up the death. I just don't know where that  
13 language came from. I haven't seen it in the law Your Honor.

14 THE COURT: It wasn't a code section it was a case.

15 MR. LOWREY: It was Clark versus somebody from your  
16 court, not while you were on it.

17 MR. MELTION: I didn't see it when I Googled it and  
18 Westlaw-ed it and everything. I saw materially accelerated.

19 THE COURT: As you may have become aware, there is  
20 certain occasion where you get Land on the law; this is not  
21 one of those occasions. This came from a court --

22 MR. LOWREY: Georgia Supreme Court.

23 THE COURT: I think it's quoted exactly.

24 MR. LOWREY: If it's not it is pretty darn close.  
25 You might have modified it in a way that's better for Ford.

5:49:18PM 1

THE COURT: Did y'all submit the charge? Who  
submitted this charge?

2  
3 MR. LOWREY: Yes, Your Honor, we did.

4 MR. MELTION: I just didn't see the language  
5 anywhere and I did a search.

6 THE COURT: Well, let's make sure it's in that case.

7 MS. WRIGHT: Your Honor, maybe this helps. They  
8 have only argued caused or contributed. No witness for the  
9 Plaintiffs have come in and said it sped up their death.

10 MR. LOWREY: Your Honor, I am not going to die on  
11 that hill. We are fine with one and two and without the  
12 significance --

13 THE COURT: All right, good on everybody agrees on  
14 one and two. We will strike three.

15 All right Mr. Melton, anything else?

16 MR. MELTION: Mr. Eady had a couple of last-minute  
17 things.

18 MR. LOWREY: I don't even know if it was an  
19 objection. That resolves your concerns.

20 MR. MELTION: I am resolved. Thank you.

21 MR. LOWREY: Understood.

22 THE COURT: Okay, Mr. Eady had something.

23 MR. EADY: Yes, Your Honor, this is just a couple  
24 little things. Also in charge number 8, we have an  
25 instruction that's right above where we were talking about.

5:50:19PM 1 It's on page 12 with regard to the federal motor vehicle --  
2 Actually, it's on page 11, it's on the Federal Motor Vehicle  
3 Safety Standards. This one is just confusing for the reason  
4 that they didn't apply to this truck so I am not sure that we  
5 need to give that.

6 MR. LOWREY: So you want to take out everything?

7 MR. EADY: We can takeout from here.

8 MR. LOWREY: I mean -- May I consult briefly with  
9 Mr. Butler?

10 THE COURT: Sure.

11 MR. LOWREY: We believe the charge should stay Your  
12 Honor. Even if the regulation didn't apply Ford has  
13 repeatedly made claims from the witness stand: we complied  
14 fully, we complied fully, we complied fully. They are welcome  
15 to explain in closing and probably will that the roof strength  
16 standard didn't apply. The jury has heard so much about these  
17 standards. They should know that it is not a conclusive  
18 defense.

19 MR. BUTLER: Well, and also for purposes of  
20 impeachment. Their witness Burnett just testified today that  
21 the federal standards are not minimum standards, which is  
22 contrary to law.

23 THE COURT: That's what this says.

24 MR. BUTLER: I agree.

25 THE COURT: Why can the federal standards not be

5:52:15PM 1 considered in all of those factors that you would consider in  
2 deciding whether there's a defect? Even if they weren't  
3 required to comply with it, why wouldn't that standard be  
4 something that should be considered in determining whether  
5 this was a defect?

6 MR. EADY: The question is whether or not it goes in  
7 the charge. Typically this rises when the Defendant says,  
8 look, we complied with the standard. This was the standard we  
9 complied with. We complied with the standard. Here there was  
10 a standard that we didn't have to -- the vehicle didn't have  
11 to comply with because there was no applicable standard. So  
12 it sounds like you're trying to claim a defense that's not  
13 there if that makes sense.

14 THE COURT: Okay, so you are saying that the 216,  
15 whatever the number was, that didn't apply to you all at all.

16 MR. EADY: That's correct.

17 THE COURT: Surely the jury can consider what the  
18 standard was with regard to Ford 150s in deciding whether or  
19 not there was a design defect for not following that level  
20 following the level of roof safety for the F250. Can't the  
21 216 standard be considered in the jury's determination as to  
22 whether or not this was a defective design.

23 MR. EADY: Your Honor, I think that has been argued  
24 by both sides.

25 THE COURT: I know.



5:54:08PM 1

MR. EADY: I'm sure it didn't go in the charge because there's no argument that because you complied with the standard --

2

THE COURT: You don't want the jury to be told that y'all's compliance with all of the standards that may exist is something that should be considered by them. Don't you want to be able to argue that; that y'all complied with all the standards?

3

MR. LOWREY: If Ford's objection is to the first sentence of that paragraph that's highlighted we would have no objection --

4

THE COURT: Sometimes we outsmart ourselves.

5

MR. EADY: Can you give us a second, Your Honor?

6

THE COURT: Yes.

7

MR. EADY: Thank you.

8

THE COURT: It says you may consider proof of a manufacturer's compliance with the standards and then it says those were just minimum standards. I think this is entirely consistent with the law and the facts. Y'all are claiming that the Ford 250 had no standard for roof strength, correct?

9

MR. EADY: 216 did not apply to this vehicle; that's correct.

10

THE COURT: Okay, and all this says is if you comply with the law, comply with all the standards, you're good, but your compliance does not necessarily mean you're good.

11

5:55:39PM 1

MR. EADY: You're right, Your Honor. We withdraw  
the objection after a little consultation.

2  
3 THE COURT: Okay, are you good with it the way it  
4 is?

5 MR. EADY: We are good with the way it is.

6 THE COURT: Okay.

7 MR. MALEK: It took a lot over there.

8 MR. LOWREY: At least I am not the only one who  
9 delayed dinner though.

10 THE COURT: Plaintiffs counsel say, okay, we agree  
11 with you and go home. All right, is there anything else that  
12 anybody wants to alert the Court to in regards to the verdict  
13 form? Mr. Eady keeps looking. I'm concerned. I don't want  
14 to get a brief tonight at 9:30 p.m. Anything else?

15 MR. EADY: Yes, Your Honor. Charge number nine.

16 THE COURT: Yes, sir. All of this was in there  
17 prior to last night. None of this stuff was added new so I  
18 don't know why we didn't take it up last night. Tell me  
19 again.

20 MR. EADY: You are correct, Your Honor. This is the  
21 last one on taking stuff out. It's on page 16, the last  
22 sentence in the first paragraph because we haven't had any  
23 testimony with regard to what the decedents earned. I believe  
24 they were both retired.

25 MR. LOWREY: Let me ask Mr. Butler.

5:57:20PM 1

THE COURT: That is true.

2

MR. LOWREY: We prefer it stay in as a clarifying charge so the jury does not --

3

4

THE COURT: The reason it's in there is because there's a possibility the jury would think, okay, we can only give damages for what he earned.

6

7

MR. LOWREY: Or the fact that they are retired could somehow affect the damages.

8

9

THE COURT: I'm going to leave that in there.

10

MR. EADY: Your Honor, the last objection we have is really to the failure to include the supplemental charges, the one we discussed yesterday.

12

13

THE COURT: Okay, I have not had any epiphany overnight so those rulings that I made last night are the same. They are preserved for that appeal.

15

16

MR. EADY: Okay, those were filed under document 357 and those are Ford Motor Company's request of charges 36A, 37, and 39A; and those are all in connection with charge 11. And the last one is --

19

20

THE COURT: They were always raised last night, correct?

21

22

MR. EADY: Yes, Your Honor.

23

THE COURT: Nothing new.

24

25

MR. EADY: Nothing new. We cleaned up a little language on them that is it. The last one is requested charge

5:58:41PM 1 47A and that's a different definition of bad faith in  
2 connection with the Court's charge number 12.

3 THE COURT: I did come up with a definition of bad  
4 faith that we did not have last night. So is there any  
5 contention that Ford's definition of bad faith is not  
6 consistent with Georgia law?

7 MR. EADY: Yes, Your Honor. The first two sentences  
8 we were fine with. I think we discussed that last night.

9 THE COURT: What page are we on again, 22?

10 MR. EADY: We are on page 22, charge number 12.

11 THE COURT: What is it that you objective to as far  
12 as the Court's definition of bad faith for purposes of  
13 attorney's fees?

14 MR. EADY: The first sentence is fine, bad faith  
15 means bath faith connected to the alleged design defect in the  
16 case. We all agreed that's the underlying transaction. We  
17 also agree to the second sentence, simply making an honest  
18 mistake, or exercising poor judgment, or acting negligently  
19 does not stand alone amount to bad faith. We agree with that  
20 but that needs to be in there. It's the next one this, bad  
21 faith contemplates a conscious decision to do something wrong,  
22 and it goes on until the end. That's the Court's  
23 interpretation of what bad faith means. Our looking at the  
24 cases, bad faith means ill will and dishonesty so that's the  
25 difference.

6:00:12PM 1

MR. LOWREY: Your Honor, I think you made it harder  
2 on us than you needed to. I mean this --

3 THE COURT: Yeah. We can take out that sentence and  
4 leave in the last sentence that says in evaluating whether the  
5 Defendant engaged in bad faith you may consider whether the  
6 Defendant consciously decided to sell a product even though it  
7 knew of a dangerous condition that was likely to pose serious  
8 harm to product users. You want to remove that sentence  
9 preceding that Mr. Eady. The last one is clearly an accurate  
10 statement of the law from the case. I don't have the cite  
11 right.

12 MR. BUTLER: May I put something on the record, Your  
13 Honor?

14 THE COURT: Yes, sir.

15 MR. BUTLER: The Court's question to Mr. Eady just  
16 now was, do you want to remove this sentence: "bad faith  
17 contemplates a conscious decision to do something wrong".

18 THE COURT: Correct. I'm assuming the Plaintiffs do  
19 not object to removing that sentence.

20 You object to that one sentence being deleted.

21 I think it's consistent with the last sentence, but  
22 it may be superfluous.

23 MR. BUTLER: We're neutral.

24 MR. MELTION: Your Honor, the request was not to  
25 remove that language but to state ill and dishonesty instead

6:01:40PM 1 as a definition of bad faith. If the Court is not willing to  
2 do that we will just leave it as is.

3 THE COURT: I don't think that. I think that can be  
4 bad faith, but I don't think that's the extent of bad faith.

5 MR. MELTION: Then we will take it as it is. We are  
6 not asking for it to be removed.

7 THE COURT: Okay.

8 MR. MELTION: Then the last question Your Honor.

9 THE COURT: Yes.

10 MR. MELTION: Will the instructions go out with a  
11 jury?

12 THE COURT: Yes. The instructions will go out with  
13 the jury, the written instructions.

14 MR. BUTLER: Judge, to make it clear, the ask has to  
15 come in the opening argument -- the ask -- how much money  
16 we're asking for.

17 THE COURT: If it doesn't come in the opening  
18 argument and she doesn't mention damages at all, then you've  
19 got a problem. So it depends on what she does. Yeah, I think  
20 you need to make --

21 MR. BUTLER: When you say damages do you mean the  
22 idea of whether there were damages or dollars?

23 THE COURT: You have to ask for a specific dollar  
24 amount in the first phase.

25 MR. BUTLER: Pardon.

6:02:39PM 1

THE COURT: You are asking whether you have to ask  
2 for a specific dollar amount in the first phase.

3 MR. BUTLER: Yes.

4 MS. WRIGHT: Your Honor, I can't rebut it if he  
5 doesn't ask.

6 THE COURT: Yes. I think under the federal rules  
7 you need to because your last argument is rebuttal not new  
8 stuff. All right, we will see you all in the morning at  
9 9:00 a.m.

10 COURT SECURITY OFFICER: All rise.

11

12 (Proceedings concluded.)

13 END OF RECORD

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CERTIFICATE OF OFFICIAL REPORTER

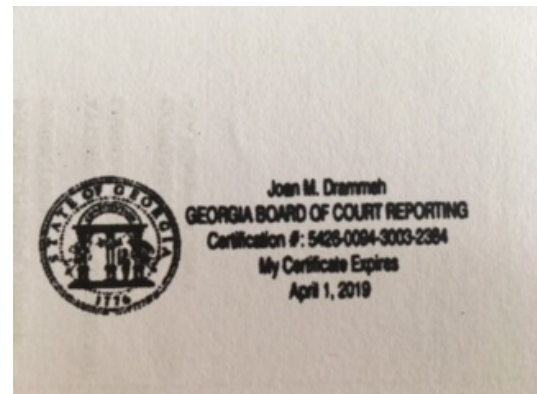
I, Joan Drammeh, Federal Official Court Reporter, in and for the United States District Court for the Middle District of Georgia, do hereby certify that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 21st day of MARCH, 2025

*Joan Drammeh*

JOAN DRAMMEH, CVR, CCR  
FEDERAL OFFICIAL COURT REPORTER

MY COMMISSION EXPIRES:  
APRIL 1, 2026





BY MR. BOORMAN: [12] 117/4 120/8 120/25 127/22 130/4 131/8 133/6 135/21 137/2 137/23 139/11 148/9  
 BY MR. BUTLER: [4] 110/23 284/17 285/6 286/5  
 BY MR. LOWREY: [13] 11/23 33/5 40/8 45/4 45/20 55/6 61/13 73/15 76/10 99/2 149/15 151/20 157/1  
 BY MR. MALEK: [5] 85/24 90/14 93/2 93/20 95/12  
 BY MR. PRATHER: [12] 231/12 239/9 255/21 256/15 256/25 262/7 263/6 268/16 270/15 272/21 274/23 282/17  
 BY MS. WRIGHT: [12] 168/24 187/3 195/19 200/24 204/21 206/6 206/20 211/3 211/24 213/1 219/4 278/24  
 COURT SECURITY OFFICER: [5] 4/3 105/24 164/2 255/11 311/10  
 COURTROOM DEPUTY: [2] 110/11 168/9  
 MR. BOORMAN: [26] 108/22 108/25 110/6 116/21 117/3 120/3 123/9 123/16 127/1 127/10 127/16 131/2 131/5 131/7 133/3 137/21 139/2 139/7 148/4 149/11 151/16 156/23 162/20 164/15 164/21 296/17  
 MR. BUTLER: [37] 4/19 4/23 8/11 8/14 9/13 9/18 10/3 109/6 127/18 163/10 163/22 165/3 165/6 255/13 261/10 263/2 283/24 284/1 285/4 286/17 286/22 287/7 287/19 287/21 291/7 292/22 299/22 300/21 303/19 303/24 309/12 309/15 309/23 310/14 310/21 310/25 311/3  
 MR. EADY: [21] 289/21 302/23 303/7 304/6 304/16 304/23 305/1 305/13 305/15 305/21 306/1 306/5 306/15 306/20 307/10 307/16 307/22 307/24 308/7 308/10 308/14  
 MR. LOWREY: [94] 5/1 5/13 5/17 5/21 7/4 7/24 9/9 10/12 11/3 11/6 11/12 11/21 39/19 39/25 40/4 45/1 55/5 61/12 72/7 72/12 72/19 72/24 73/6 73/14 76/6 76/8 90/1 90/5 90/9 92/21 93/9 95/7 98/25 105/13 116/16 116/24 123/3 126/23 127/15 129/21 133/4 136/17 136/23 139/9 148/1 151/18 156/20 164/5 164/8 164/14 164/22 165/13 165/16 165/19 262/24 270/9 290/10 290/14 290/20 291/12 291/16 291/23 292/12 292/17 292/21 293/4 294/9 295/6 295/22 296/5 296/10 298/1 299/2 300/9 300/14 300/17 300/25 301/3 301/15 301/22 301/24 302/3 302/10 302/18 302/21 303/6 303/8 303/11 305/9 306/8 306/25 307/2 307/7 309/1  
 MR. MALEK: [39] 6/5 6/12 7/1 7/17 8/13 8/19 8/25 9/2 10/10 10/19 10/25 11/10 33/4 39/16 39/21 41/10 44/25 45/17 55/3 61/8 72/9 72/22 73/11 85/22 90/2 90/7 90/12 92/25 93/8 93/15 93/19 95/10 98/23 105/16 106/17 107/24 108/9 278/17 306/7  
 MR. MELTION: [14] 292/4 293/18 294/3 295/1 297/7 301/6 301/17 302/4 302/16 302/20 309/24 310/5 310/8 310/10  
 MR. PEELER: [5] 285/1 285/8 286/2

286/4 286/19  
 MR. PHILIPAW: [6] 106/1 106/23 107/9 107/17 108/13 109/5  
 MR. PRATHER: [25] 200/14 204/13 210/18 211/19 212/15 218/21 218/23 231/10 254/25 255/4 255/20 256/5 256/12 256/14 256/24 262/5 262/22 268/14 269/23 270/2 270/11 272/19 274/17 278/19 282/15  
 MS. BAILEY: [1] 11/9  
 MS. WRIGHT: [45] 163/14 168/3 168/19 186/22 187/2 200/22 204/6 204/9 204/17 206/4 206/19 211/1 212/21 239/2 256/8 261/25 263/3 268/11 269/25 270/4 274/20 276/5 278/14 278/22 282/13 283/21 287/5 287/11 287/23 293/20 294/6 295/19 297/2 297/13 297/18 298/13 298/19 298/22 299/15 299/24 300/4 300/16 300/18 302/7 311/4  
 THE COURT: [239] 4/6 4/21 4/24 5/11 5/14 5/19 5/25 6/10 6/22 7/6 7/22 8/8 8/12 8/16 8/24 9/1 9/4 9/10 9/15 9/22 10/7 10/14 10/20 11/1 11/5 11/15 39/23 40/2 40/6 41/11 45/3 45/19 72/16 73/3 73/5 73/9 73/12 76/4 76/7 85/21 90/10 90/13 93/11 93/18 95/8 95/11 98/24 105/15 105/17 106/16 106/23 107/4 107/14 107/21 108/4 108/11 108/20 108/23 109/1 109/10 110/5 110/7 110/15 116/15 116/18 117/1 120/6 120/24 123/14 123/17 126/25 127/8 127/11 127/21 129/24 130/3 131/1 131/3 131/6 133/2 133/5 135/20 136/19 136/25 137/13 137/19 137/22 139/6 139/8 139/10 148/8 149/13 151/19 156/19 156/25 162/19 162/21 163/5 163/11 163/19 163/23 164/4 164/7 164/13 164/19 164/23 165/5 165/7 165/15 165/18 165/21 168/5 168/13 168/18 187/1 192/15 195/18 200/20 200/23 204/4 204/8 206/3 206/5 206/18 210/24 211/15 211/21 212/17 219/3 231/9 239/8 255/2 255/5 255/12 255/16 255/19 256/7 256/10 256/13 256/23 262/13 263/5 270/13 272/17 274/19 274/22 276/7 278/21 282/14 283/19 283/22 283/25 284/2 285/5 285/9 286/3 286/18 286/20 287/10 287/16 287/20 287/22 287/24 289/17 290/9 290/13 290/17 290/21 291/9 291/15 291/22 292/2 292/14 292/19 292/24 294/24 295/16 295/20 295/24 296/7 296/11 296/22 297/3 297/8 297/16 298/4 298/17 298/21 298/24 299/6 300/2 300/6 300/12 300/19 300/23 301/1 301/4 301/14 301/19 301/23 302/1 302/6 302/13 302/22 303/10 303/23 303/25 304/14 304/17 304/25 305/4 305/12 305/14 305/16 305/23 306/3 306/6 306/10 306/16 307/1 307/4 307/9 307/13 307/20 307/23 308/3 308/9 308/11 309/3 309/14 309/18 310/3 310/7 310/9 310/12 310/17 310/23 311/1 311/6  
 THE WITNESS: [14] 72/18 73/4 110/14 110/17 123/18 130/2 136/22 137/17 168/12 168/16 192/16 211/17 218/22 284/12

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 1.25 [1] 62/2  
 1.26 [2] 62/9 62/24  
 1.3 [4] 56/13 56/16 57/22 59/9  
 1.5 [3] 62/16 62/17 62/21  
 1.725 [1] 62/23  
 1.85 [2] 62/18 62/22  
 10 [10] 241/9 269/6 270/23 271/8 271/24 273/11 274/14 278/13 281/5 293/6  
 10 percent [4] 240/22 240/25 241/13 241/23  
 10,000 [2] 58/8 75/13  
 10,000 pounds [3] 74/20 74/23 74/25  
 10,066 [3] 61/1 61/24 62/7  
 10,066 pounds [2] 60/17 61/23  
 10,484 [4] 54/25 55/17 56/11 73/20  
 10,484 and [1] 56/7  
 10,484 pounds [1] 54/15  
 10,500 pound [1] 54/12  
 10,848 pounds [1] 54/20  
 10-pound [1] 196/8  
 100 [3] 12/15 12/24 248/8  
 100 percent [1] 5/13  
 102 [1] 278/12  
 103 [1] 278/13  
 105 [2] 1/18 1/20  
 105TH [1] 1/13  
 11 [2] 303/2 307/18  
 1130 [1] 2/4  
 114 [2] 69/5 71/9  
 1199 [1] 1/16  
 11:37:21 [1] 105/23  
 12 [16] 1/5 1/15 4/1 87/2 105/23 137/11 163/4 164/1 191/2 197/22 197/22 234/9 255/10 303/1 308/2 308/10  
 12,412 [1] 89/13  
 12,412 pounds [1] 100/22  
 1200 [1] 185/1  
 127 [1] 1/25  
 12A [2] 198/23 200/1  
 13 [3] 139/1 147/7 301/10  
 139 [1] 190/11  
 13:04:58 [1] 163/4

<p>1</p> <p>Case 4:23-cv-00088-CDL</p> <p>13TH [6] 1/13 1/18 1/20 4/23 8/20 9/13</p> <p>14 [1] 85/4</p> <p>14:11:30 [1] 164/1</p> <p>14A [1] 272/20</p> <p>15 [15] 105/19 105/21 185/2 191/2</p> <p>227/7 227/7 227/13 229/22 246/6</p> <p>255/4 255/8 269/6 271/8 291/6 291/9</p> <p>15 liters [1] 228/15</p> <p>15 percent [6] 62/21 270/23 271/5</p> <p>271/25 273/11 281/5</p> <p>15-MINUTE [1] 105/22</p> <p>150 [3] 157/11 157/19 175/9</p> <p>1500 [6] 76/23 76/25 77/10 77/11 86/7</p> <p>86/10</p> <p>150s [2] 157/23 304/18</p> <p>15th [10] 21/19 49/6 257/6 257/12</p> <p>257/18 257/25 258/12 273/18 276/16</p> <p>276/19</p> <p>16 [4] 88/6 89/9 209/14 306/21</p> <p>16.12 [1] 198/22</p> <p>16.12A [1] 95/4</p> <p>169 [3] 45/16 45/17 53/16</p> <p>16:35:54 [1] 255/10</p> <p>17 [1] 21/20</p> <p>17,000 [1] 63/8</p> <p>17,000 pounds [1] 63/3</p> <p>175 [1] 272/4</p> <p>175-pound [1] 219/20</p> <p>18 [2] 293/6 293/8</p> <p>18-year-old [1] 197/7</p> <p>182 [1] 47/23</p> <p>185 [1] 48/22</p> <p>186 [7] 106/6 107/20 108/12 108/15</p> <p>108/17 108/21 108/23</p> <p>186.1 [2] 61/10 106/8</p> <p>186.2 [3] 61/10 87/21 89/9</p> <p>1869.2 [1] 106/9</p> <p>188 [1] 49/16</p> <p>189 [1] 50/18</p> <p>19 [1] 291/18</p> <p>1992 [4] 111/18 112/7 112/9 118/2</p> <p>1996 [10] 45/12 45/23 48/18 49/14</p> <p>51/19 53/23 54/6 73/21 88/15 89/1</p> <p>1997 [3] 81/4 81/7 81/10</p> <p>1998 [3] 49/6 114/15 161/8</p> <p>1999 [9] 13/8 46/5 46/13 46/19 50/15</p> <p>51/11 54/23 77/24 157/15</p> <p>19th [3] 247/15 256/1 256/17</p> <p>1:10 [1] 162/24</p> <p>1st [1] 159/10</p> <p>1x7.8-inch [1] 226/3</p>	<p>2008 [5] 88/3 88/4 89/15 100/19</p> <p>2009 [4] 84/4 101/13 156/18 156/21</p> <p>2010 [2] 126/6 126/19</p> <p>2011 [2] 37/21 156/21</p> <p>2012 [4] 13/9 13/11 13/19 14/14</p> <p>20125 [1] 37/8</p> <p>2014 [7] 36/16 36/20 36/21 159/4</p> <p>159/10 160/1 280/9</p> <p>2015 [29] 36/13 36/14 37/15 42/3 42/6</p> <p>42/23 76/11 76/22 76/25 77/2 77/4</p> <p>77/10 77/11 77/12 77/13 77/15 77/18</p> <p>77/23 78/10 86/7 86/20 86/22 87/5</p> <p>87/11 87/16 100/6 105/6 156/22 157/6</p> <p>2015s [1] 99/23</p> <p>2016 [2] 46/5 157/15</p> <p>2017 [4] 38/3 78/15 105/8 105/12</p> <p>2022 [8] 160/3 161/10 233/2 233/3</p> <p>233/4 233/15 233/22 237/4</p> <p>2023 [6] 247/15 256/1 256/17 275/20</p> <p>276/25 277/10</p> <p>2024 [14] 21/19 159/8 159/11 160/1</p> <p>160/2 160/9 257/6 257/12 257/18</p> <p>258/1 258/12 273/18 276/16 276/19</p> <p>2025 [8] 1/5 4/1 13/12 105/23 163/4</p> <p>164/1 255/10 312/13</p> <p>208 [4] 126/6 126/14 126/14 126/21</p> <p>209 [3] 126/6 126/19 126/21</p> <p>21 [5] 34/1 34/2 34/24 34/24 210/9</p> <p>210 [1] 126/22</p> <p>212 [1] 116/13</p> <p>214 [2] 132/24 133/3</p> <p>216 [9] 75/21 76/21 81/17 88/9 88/20</p> <p>96/23 304/14 304/21 305/21</p> <p>21st [1] 312/13</p> <p>22 [2] 308/9 308/10</p> <p>22nd [1] 237/4</p> <p>23 [1] 267/9</p> <p>2320 [1] 2/10</p> <p>236 [3] 71/18 72/8 73/14</p> <p>237.1 [2] 129/9 129/18</p> <p>237.2 [2] 130/23 131/2</p> <p>23rd [2] 48/19 106/15</p> <p>23rd of [1] 50/15</p> <p>24 [3] 77/6 117/11 161/13</p> <p>25 [1] 117/15</p> <p>25 percent [1] 63/24</p> <p>25-degree [1] 96/24</p> <p>250 [8] 46/2 53/7 73/18 78/10 86/17</p> <p>157/20 175/4 305/20</p> <p>2500 [1] 86/11</p> <p>250s [1] 157/22</p> <p>26 [1] 117/15</p> <p>27th [1] 159/11</p> <p>28 [3] 216/10 216/11 312/6</p> <p>280 [1] 2/8</p> <p>2801 [1] 2/6</p> <p>2:15 [2] 162/24 163/2</p> <p>2nd [1] 277/9</p> <p>2nd and [1] 276/24</p>	<p>30,000 pounds [1] 68/13</p> <p>30,000-pound [1] 66/22</p> <p>300 [1] 2/6</p> <p>3000 [2] 1/23 2/2</p> <p>302 [2] 33/4 291/23</p> <p>303 [1] 128/15</p> <p>30308 [3] 1/24 2/3 2/11</p> <p>30309 [1] 2/5</p> <p>30324 [1] 1/15</p> <p>306-1 [2] 106/6 108/14</p> <p>308 [1] 267/9</p> <p>309-5 [1] 267/9</p> <p>310 [2] 274/14 274/18</p> <p>313.13 [1] 254/23</p> <p>313.32 [4] 202/19 204/2 206/1 206/4</p> <p>313.34 [3] 286/24 287/1 287/2</p> <p>313.35 [2] 204/3 206/15</p> <p>313.43 [4] 203/22 203/23 257/1 259/17</p> <p>313.44 [4] 262/5 262/8 262/13 262/15</p> <p>31901 [2] 1/13 1/18</p> <p>31902 [2] 1/16 1/20</p> <p>323.46 [1] 202/3</p> <p>3291 [1] 2/8</p> <p>34 degrees [3] 192/14 192/17 192/18</p> <p>34.77 [1] 271/21</p> <p>35 [1] 270/22</p> <p>35 miles [6] 130/10 189/4 190/24</p> <p>194/20 271/18 271/19</p> <p>35-degree [1] 198/5</p> <p>35-mile [8] 193/13 194/15 194/17</p> <p>268/7 268/17 268/21 269/7 273/12</p> <p>35-mile-per [1] 281/9</p> <p>35-miles [1] 188/19</p> <p>350 [1] 86/17</p> <p>35243 [1] 2/9</p> <p>357 [1] 307/16</p> <p>359A [3] 137/11 209/13 210/8</p> <p>36 [2] 88/18 117/18</p> <p>36A [1] 307/17</p> <p>37 [1] 307/17</p> <p>3900 [1] 1/25</p> <p>396-gram [1] 219/21</p> <p>39A [1] 307/18</p> <p>3D [2] 33/13 214/12</p> <p>3rd [1] 276/24</p>
<p>2</p> <p>2-3 [1] 275/20</p> <p>2.0 millimeters [1] 49/21</p> <p>2.1 millimeters [1] 49/21</p> <p>2.35 for [1] 49/10</p> <p>2.4 millimeters [1] 49/10</p> <p>2.5 [1] 59/3</p> <p>2.97 [2] 77/12 87/7</p> <p>20 [4] 8/20 159/8 175/10 217/19</p> <p>200 [4] 2/8 12/15 114/17 181/20</p> <p>200 feet [1] 190/18</p> <p>2000 pounds [1] 63/24</p> <p>2001 [1] 83/24</p> <p>2002 [1] 42/23</p> <p>2003 [4] 60/12 60/21 61/19 106/9</p> <p>2005 [2] 72/2 73/18</p> <p>2006 [3] 43/23 60/11 69/8</p>	<p>3</p> <p>3.56 [2] 77/13 87/13</p> <p>3.94 [2] 77/14 87/18</p> <p>30 [12] 111/3 113/16 114/16 114/18</p> <p>117/19 138/11 146/18 158/4 175/10</p> <p>220/17 256/2 266/5</p> <p>30 miles [1] 188/22</p> <p>30 percent [2] 63/22 225/9</p> <p>30,000 [1] 69/3</p>	<p>4</p> <p>4-6 inches [1] 260/11</p> <p>4-year-old [3] 234/15 234/21 235/9</p> <p>4.0 [5] 87/3 97/17 99/4 99/7 99/10</p> <p>4.1 [1] 77/11</p> <p>40 [2] 111/16 244/4</p> <p>43 [1] 22/25</p> <p>44-year-old [4] 272/3 272/4 273/13</p> <p>281/3</p> <p>44114 [1] 2/1</p> <p>47.12A [1] 102/12</p> <p>47.15 [1] 145/18</p> <p>47.17 [1] 140/2</p> <p>47.19 [1] 141/22</p> <p>4717 [1] 192/11</p> <p>4719 [1] 193/17</p> <p>472 [1] 135/15</p> <p>47A [1] 308/1</p> <p>4:23-CV-00088-CDL [1] 1/4</p> <p>4th [1] 51/11</p> <p>5</p> <p>5 percent [1] 248/7</p> <p>5'1 [5] 202/7 203/3 203/4 203/12</p>

<p>5 5'1... [1] 219/20 5'3 [4] 202/23 203/2 203/11 203/18 5'8 [1] 272/3 5,000 [2] 58/10 75/14 5-degree [1] 96/24 5.5 [1] 77/19 50 [4] 114/20 158/3 234/12 289/24 50 miles [1] 149/7 50th [2] 272/3 281/2 53 [1] 53/17 537A [2] 21/15 22/24 551 [2] 89/18 90/11 551A [2] 90/12 91/7 552 [1] 92/16 56 [2] 212/25 214/21 56 percent [2] 213/10 214/2 581 [1] 89/25 582 [2] 21/19 33/3 582C [1] 81/23 583.1 [2] 37/10 102/17 583.5 [2] 95/18 96/2 588 [2] 132/24 133/3 597 [3] 269/15 269/16 269/24</p>	<p>90s [1] 45/6 911 [3] 23/3 215/20 216/18 95 percent [2] 194/16 248/2 96 [1] 48/19 999 [1] 2/4 9:00 [1] 289/14 9:00 a.m [2] 288/2 311/9 9:30 [1] 306/14 9th [3] 233/4 233/15 233/22</p>	<p>268/6 271/14 271/23 273/10 276/3 276/8 277/12 278/1 278/2 280/4 281/17 282/22 285/7 285/13 285/19 285/20 286/7 288/7 289/2 294/9 294/10 294/20 301/10 302/25 303/16 above [23] 17/10 17/11 24/1 38/22 48/11 140/19 203/24 206/23 206/24 206/24 206/24 260/12 260/13 261/10 261/11 261/12 261/17 262/18 271/14 275/6 287/4 302/25 312/8 above-entitled [1] 312/8 ABS [5] 147/9 147/10 147/16 148/17 148/24 absent [1] 292/8 absolutely [12] 11/9 32/16 43/10 83/8 174/9 180/10 182/11 189/4 211/11 212/13 220/3 300/9 absorb [1] 104/22 absorbing [4] 66/6 68/24 144/23 145/2 abstract [1] 88/6 accelerated [2] 174/17 301/18 acceleration [1] 75/4 accepted [6] 257/14 257/19 258/1 258/14 258/18 259/9 access [2] 292/9 292/11 accident [30] 23/5 43/12 44/11 64/8 93/22 102/15 103/5 113/19 113/23 115/12 115/25 139/25 148/5 151/8 152/9 152/13 171/2 171/2 171/21 185/7 198/15 198/17 200/4 215/4 218/8 279/22 280/1 281/7 282/9 298/23 accomplished [2] 51/24 51/25 according [9] 59/9 62/11 64/12 65/6 234/23 259/20 259/24 260/10 260/23 account [4] 24/25 75/22 177/23 189/17 accurate [5] 8/4 19/22 48/8 213/12 309/9 accurately [2] 95/20 297/3 achieved [2] 54/14 195/1 acknowledge [2] 33/24 294/13 acknowledged [1] 33/23 acknowledges [1] 33/24 across [9] 24/22 26/24 46/9 51/6 144/4 155/9 196/6 225/5 234/7 act [2] 279/3 279/5 acting [1] 308/18 action [2] 7/5 166/17 active [3] 147/11 147/15 178/13 activities [1] 159/13 actual [8] 16/25 55/18 73/25 89/13 101/20 101/22 125/6 139/15 actually [46] 7/17 19/6 34/11 35/2 43/14 47/11 47/13 58/17 69/20 70/8 76/21 82/14 83/4 96/14 112/14 118/11 125/6 134/5 160/9 167/22 167/23 176/12 176/13 176/25 182/1 184/10 192/25 193/13 193/25 196/13 196/22 198/4 205/19 206/12 207/4 207/22 216/1 225/16 225/25 230/8 244/12 253/20 275/6 280/19 280/19 303/2 acute [1] 197/23 add [1] 90/5 added [1] 306/17 addition [7] 118/18 128/4 169/21 171/25 174/6 217/10 299/7 additional [13] 16/9 18/11 23/19 37/7 44/1 61/6 62/21 85/12 91/14 108/20 118/19 136/1 144/3 address [4] 109/10 117/24 290/12</p>
<p>6 6 inches [9] 24/1 260/13 260/19 260/24 260/25 261/17 262/17 280/10 287/4 6,131 [1] 63/21 6,131 pounds [1] 63/19 60 [1] 197/8 600 [3] 1/23 2/2 2/10 6000 [1] 62/16 60s [1] 184/6 64 [1] 281/6 64-year-old [1] 272/7 654.60 [1] 199/25 657 [1] 8/11</p>	<p>A a.m [3] 288/2 289/14 311/9 AAAM [3] 119/9 119/11 119/15 abbreviated [4] 120/21 184/1 184/3 273/23 abdomen [1] 225/12 abilities [1] 292/10 ability [3] 44/8 79/8 79/11 able [28] 28/22 31/21 41/18 73/7 76/16 76/20 105/4 105/7 113/12 122/4 122/4 131/14 134/23 157/11 158/10 162/4 204/17 219/18 226/17 237/24 253/14 254/4 259/15 260/16 282/4 288/16 289/3 305/7 about [276] 4/13 5/2 5/4 7/16 8/7 9/13 11/4 12/1 15/2 15/5 15/10 15/24 17/16 18/1 18/11 18/14 21/15 24/15 24/17 24/20 25/12 25/14 25/17 25/23 26/13 27/7 32/13 33/1 33/11 33/23 34/9 36/24 41/3 42/23 45/5 45/13 46/4 52/20 53/24 54/2 55/2 55/7 55/10 55/11 55/24 59/9 59/18 60/10 60/13 60/15 60/21 61/14 61/16 61/19 62/2 62/10 62/10 62/17 62/17 63/1 63/7 63/8 63/17 63/22 63/24 64/8 64/9 66/20 68/9 68/21 69/25 70/1 70/18 71/1 71/10 71/14 72/25 73/7 73/21 74/6 74/9 74/13 75/17 76/25 78/3 78/14 78/23 79/16 79/19 80/23 80/24 81/5 81/12 81/15 82/21 82/22 83/9 83/18 83/21 83/25 84/5 84/11 85/4 86/1 88/11 88/14 90/16 90/17 90/20 90/23 91/8 91/10 91/15 92/21 95/13 95/21 95/24 98/4 98/4 100/3 101/5 102/20 103/8 109/7 109/9 111/3 114/12 114/16 114/24 117/17 117/21 118/7 118/7 118/22 119/6 122/24 123/4 123/5 126/24 127/4 127/15 128/24 129/21 130/16 132/16 132/17 135/3 135/25 137/13 137/20 138/12 143/7 143/13 147/8 147/16 148/2 149/7 150/9 152/15 153/3 155/21 156/10 156/13 157/5 157/9 158/3 158/15 159/16 160/7 160/13 160/25 161/13 161/15 162/24 164/9 165/3 165/25 166/4 167/6 167/7 167/8 170/15 172/3 172/24 174/3 176/23 177/24 178/3 180/1 180/10 183/17 187/23 188/25 190/24 191/6 191/21 192/14 192/16 195/21 199/3 199/8 203/7 208/20 209/23 210/23 211/9 212/9 212/22 213/16 214/20 215/5 215/14 216/11 217/19 218/2 224/18 225/9 230/6 238/15 238/18 240/7 240/11 241/5 241/9 242/11 242/24 243/5 243/24 244/8 246/6 246/18 247/21 248/19 248/20 249/20 249/21 250/23 251/7 255/24 256/9 259/1 260/18 261/4 262/20 262/21 262/24 266/13 266/15 266/17 266/18 268/1</p>	<p>above-entitled [1] 312/8 ABS [5] 147/9 147/10 147/16 148/17 148/24 absent [1] 292/8 absolutely [12] 11/9 32/16 43/10 83/8 174/9 180/10 182/11 189/4 211/11 212/13 220/3 300/9 absorb [1] 104/22 absorbing [4] 66/6 68/24 144/23 145/2 abstract [1] 88/6 accelerated [2] 174/17 301/18 acceleration [1] 75/4 accepted [6] 257/14 257/19 258/1 258/14 258/18 259/9 access [2] 292/9 292/11 accident [30] 23/5 43/12 44/11 64/8 93/22 102/15 103/5 113/19 113/23 115/12 115/25 139/25 148/5 151/8 152/9 152/13 171/2 171/2 171/21 185/7 198/15 198/17 200/4 215/4 218/8 279/22 280/1 281/7 282/9 298/23 accomplished [2] 51/24 51/25 according [9] 59/9 62/11 64/12 65/6 234/23 259/20 259/24 260/10 260/23 account [4] 24/25 75/22 177/23 189/17 accurate [5] 8/4 19/22 48/8 213/12 309/9 accurately [2] 95/20 297/3 achieved [2] 54/14 195/1 acknowledge [2] 33/24 294/13 acknowledged [1] 33/23 acknowledges [1] 33/24 across [9] 24/22 26/24 46/9 51/6 144/4 155/9 196/6 225/5 234/7 act [2] 279/3 279/5 acting [1] 308/18 action [2] 7/5 166/17 active [3] 147/11 147/15 178/13 activities [1] 159/13 actual [8] 16/25 55/18 73/25 89/13 101/20 101/22 125/6 139/15 actually [46] 7/17 19/6 34/11 35/2 43/14 47/11 47/13 58/17 69/20 70/8 76/21 82/14 83/4 96/14 112/14 118/11 125/6 134/5 160/9 167/22 167/23 176/12 176/13 176/25 182/1 184/10 192/25 193/13 193/25 196/13 196/22 198/4 205/19 206/12 207/4 207/22 216/1 225/16 225/25 230/8 244/12 253/20 275/6 280/19 280/19 303/2 acute [1] 197/23 add [1] 90/5 added [1] 306/17 addition [7] 118/18 128/4 169/21 171/25 174/6 217/10 299/7 additional [13] 16/9 18/11 23/19 37/7 44/1 61/6 62/21 85/12 91/14 108/20 118/19 136/1 144/3 address [4] 109/10 117/24 290/12</p>
<p>7 70s [2] 184/6 220/22 730 [2] 255/22 256/6 74 [2] 226/12 281/6 74-year-old [1] 272/7 745 [1] 158/20 75 [1] 185/13 753 [1] 312/6 78746 [1] 2/6</p>	<p>8 8,000 [5] 56/8 56/11 70/10 75/14 101/1 8,000 pound [2] 58/9 62/7 8,000-pound [2] 62/1 63/9 8,900 pounds [2] 70/6 70/9 80 [1] 175/11 80 feet [1] 190/20 8000 pounds [2] 63/22 70/5 8000W [1] 71/9 80s [1] 226/23 82 [1] 149/6 84 [1] 19/12 85 [1] 271/10 85 percent [1] 271/10 867 [3] 4/20 8/15 8/16 8900S [1] 71/9</p>	<p>9 90 [2] 241/20 271/10 90 percent [1] 241/14 9000 [1] 74/3</p>
<p>9 90 [2] 241/20 271/10 90 percent [1] 241/14 9000 [1] 74/3</p>	<p>90s [1] 45/6 911 [3] 23/3 215/20 216/18 95 percent [2] 194/16 248/2 96 [1] 48/19 999 [1] 2/4 9:00 [1] 289/14 9:00 a.m [2] 288/2 311/9 9:30 [1] 306/14 9th [3] 233/4 233/15 233/22</p>	<p>268/6 271/14 271/23 273/10 276/3 276/8 277/12 278/1 278/2 280/4 281/17 282/22 285/7 285/13 285/19 285/20 286/7 288/7 289/2 294/9 294/10 294/20 301/10 302/25 303/16 above [23] 17/10 17/11 24/1 38/22 48/11 140/19 203/24 206/23 206/24 206/24 206/24 260/12 260/13 261/10 261/11 261/12 261/17 262/18 271/14 275/6 287/4 302/25 312/8 above-entitled [1] 312/8 ABS [5] 147/9 147/10 147/16 148/17 148/24 absent [1] 292/8 absolutely [12] 11/9 32/16 43/10 83/8 174/9 180/10 182/11 189/4 211/11 212/13 220/3 300/9 absorb [1] 104/22 absorbing [4] 66/6 68/24 144/23 145/2 abstract [1] 88/6 accelerated [2] 174/17 301/18 acceleration [1] 75/4 accepted [6] 257/14 257/19 258/1 258/14 258/18 259/9 access [2] 292/9 292/11 accident [30] 23/5 43/12 44/11 64/8 93/22 102/15 103/5 113/19 113/23 115/12 115/25 139/25 148/5 151/8 152/9 152/13 171/2 171/2 171/21 185/7 198/15 198/17 200/4 215/4 218/8 279/22 280/1 281/7 282/9 298/23 accomplished [2] 51/24 51/25 according [9] 59/9 62/11 64/12 65/6 234/23 259/20 259/24 260/10 260/23 account [4] 24/25 75/22 177/23 189/17 accurate [5] 8/4 19/22 48/8 213/12 309/9 accurately [2] 95/20 297/3 achieved [2] 54/14 195/1 acknowledge [2] 33/24 294/13 acknowledged [1] 33/23 acknowledges [1] 33/24 across [9] 24/22 26/24 46/9 51/6 144/4 155/9 196/6 225/5 234/7 act [2] 279/3 279/5 acting [1] 308/18 action [2] 7/5 166/17 active [3] 147/11 147/15 178/13 activities [1] 159/13 actual [8] 16/25 55/18 73/25 89/13 101/20 101/22 125/6 139/15 actually [46] 7/17 19/6 34/11 35/2 43/14 47/11 47/13 58/17 69/20 70/8 76/21 82/14 83/4 96/14 112/14 118/11 125/6 134/5 160/9 167/22 167/23 176/12 176/13 176/25 182/1 184/10 192/25 193/13 193/25 196/13 196/22 198/4 205/19 206/12 207/4 207/22 216/1 225/16 225/25 230/8 244/12 253/20 275/6 280/19 280/19 303/2 acute [1] 197/23 add [1] 90/5 added [1] 306/17 addition [7] 118/18 128/4 169/21 171/25 174/6 217/10 299/7 additional [13] 16/9 18/11 23/19 37/7 44/1 61/6 62/21 85/12 91/14 108/20 118/19 136/1 144/3 address [4] 109/10 117/24 290/12</p>



<p><b>A</b> Case 4:23-cv-00088-CDL  address... [1] 292/2  Adenosine [1] 181/21  adjective [1] 165/11  Adjunct [1] 213/7  adjust [1] 124/7  adjusted [6] 125/11 154/17 154/18  155/14 155/14 291/20  adjuster [1] 155/17  adjusting [1] 162/22  adjustment [2] 121/25 154/17  adjustments [1] 126/2  Admin [1] 176/21  Administration [2] 176/16 176/24  admissible [2] 6/6 270/8  admission [18] 4/16 6/2 6/2 6/4 6/13  6/15 7/8 7/10 7/14 10/24 10/25 11/11  165/12 166/3 166/18 167/17 206/2  206/16  admissions [3] 164/20 166/19 167/1  admit [19] 8/8 72/7 89/20 92/18 93/13  116/13 131/3 163/15 165/12 166/1  166/20 166/21 230/16 253/7 256/10  256/23 263/7 267/5 287/16  admits [2] 166/22 166/24  admitted [43] 10/8 10/23 21/16 37/11  73/10 73/12 87/21 89/18 90/13 92/17  95/8 116/19 130/3 131/6 133/5 139/10  163/7 163/20 163/24 164/11 164/22  165/16 165/18 166/6 166/17 167/1  167/2 167/17 167/18 167/19 204/12  206/2 206/5 206/18 209/14 254/23  255/23 257/2 262/6 262/13 263/18  270/13 274/22  admitting [1] 93/11  adopts [1] 98/11  advance [1] 201/23  advanced [3] 112/19 118/24 118/25  Advancement [1] 119/14  advancements [1] 78/16  advice [2] 147/25 148/12  advised [1] 222/20  aerospace [1] 112/2  affect [13] 51/23 56/3 56/5 86/13  154/18 154/20 155/12 155/13 155/15  220/9 220/13 220/14 307/8  affected [2] 38/14 220/16  affecting [1] 58/11  affects [5] 198/8 217/14 217/15 220/11  220/13  affirmative [8] 4/16 4/21 6/16 8/20 8/22  9/13 165/19 296/2  affirmatively [1] 104/15  afford [1] 84/17  after [66] 9/13 9/14 9/15 9/24 12/12  15/6 17/16 18/3 25/4 26/2 29/23 32/18  33/7 33/25 36/25 47/19 48/20 49/14  51/14 52/3 68/20 82/4 83/20 88/20  89/1 91/16 92/14 95/3 101/20 103/5  103/6 112/4 112/6 113/16 135/11  142/1 160/2 164/25 172/10 172/10  172/14 175/19 176/6 176/15 177/1  183/7 183/13 189/5 193/18 194/6  194/22 194/22 198/16 215/16 230/23  243/15 244/15 245/15 254/13 259/12  259/14 275/6 276/24 277/24 282/8  306/2  afternoon [4] 168/25 169/1 231/13  231/14  afterward [1] 106/8</p>	<p>again [60] 12/10 25/14 32/9 32/13 35/5  39/14 40/7 49/17 52/3 60/19 70/21  77/1 78/7 92/18 94/22 96/25 97/1 97/2  97/3 100/7 100/16 101/6 102/9 105/25  141/22 144/16 148/10 151/21 156/21  156/22 164/3 175/1 190/25 191/3  195/14 203/7 203/23 203/23 206/7  209/6 209/7 212/15 218/9 218/23  219/11 219/11 227/18 229/21 233/17  234/9 237/24 242/20 254/13 259/14  275/15 285/8 293/18 295/1 306/19  308/9  against [7] 12/20 70/10 235/9 235/15  248/12 248/15 263/21  age [2] 197/4 227/19  aggressive [1] 188/25  ago [7] 87/22 106/20 135/8 204/22  233/16 255/24 284/4  agoing [1] 14/5  agonal [2] 222/7 222/9  agree [28] 43/6 43/13 59/11 65/4 76/12  76/14 84/14 98/12 99/3 125/22 132/18  134/17 146/18 152/20 152/20 153/10  163/8 163/22 170/12 262/14 265/23  295/22 298/15 300/12 303/24 306/10  308/17 308/19  agreed [2] 300/14 308/16  agreeing [2] 43/16 43/18  agreement [1] 300/10  agrees [2] 163/20 302/13  ahead [11] 60/11 76/7 93/18 95/11  123/17 130/5 131/7 137/19 168/6  216/12 284/8  AICD [1] 243/2  air [6] 190/21 190/25 194/22 195/3  195/4 277/23  airbag [16] 42/1 131/15 139/21 140/14  140/17 141/19 141/20 145/3 145/3  145/7 156/8 175/2 175/3 175/17 184/9  194/4  airbags [24] 37/4 42/25 122/25 139/18  139/18 140/11 140/18 140/18 141/5  146/22 155/25 157/14 173/19 175/2  175/10 184/7 188/25 189/1 190/7  193/21 193/22 193/25 194/1 194/8  airborne [1] 149/6  airway [2] 222/10 230/8  AIS [8] 184/2 184/24 214/23 231/5  273/24 274/7 274/25 275/6  AIS3 [7] 213/15 213/18 213/21 214/1  231/6 271/14 275/3  AL [2] 1/4 2/8  Albemarle [3] 179/4 231/20 264/15  alert [2] 109/3 306/12  alive [5] 171/13 214/8 236/2 251/13  254/2  all [241] 4/3 4/8 4/13 8/4 8/17 9/5 9/5  9/10 9/12 9/21 9/24 9/25 9/25 10/14  10/21 11/15 12/3 13/2 13/12 14/10  16/13 17/14 18/2 21/7 25/22 26/4 27/1  29/10 31/2 31/5 35/5 35/6 35/8 36/10  38/14 40/17 41/15 43/9 46/9 53/1 53/1  56/2 56/4 58/4 61/25 64/1 65/5 65/13  65/17 65/20 66/2 66/10 67/20 68/14  68/16 68/18 68/23 72/12 75/23 85/20  86/2 90/13 95/11 99/23 100/9 102/12  102/17 105/6 105/8 105/13 105/24  106/24 107/5 107/6 108/11 109/1  109/10 110/1 110/8 113/6 113/7 113/7  114/22 114/23 119/19 122/5 123/24</p>	<p>124/20 125/8 125/17 125/24 126/11  127/6 127/13 127/21 128/22 129/7  130/14 132/3 134/3 134/8 135/20  137/19 137/22 138/8 139/4 140/13  141/16 142/2 148/4 149/5 149/8  149/21 153/4 154/18 155/10 155/15  158/5 158/8 160/1 160/18 162/18  162/21 162/22 163/11 163/23 163/24  164/2 167/7 168/5 168/6 168/18  169/25 173/8 173/19 174/23 176/4  176/6 178/1 178/6 179/20 180/10  180/25 181/24 182/3 182/4 182/8  183/1 183/6 184/5 184/8 190/22 193/7  194/19 195/14 195/15 195/17 196/12  197/5 197/12 201/22 202/9 207/13  208/15 208/21 209/1 209/1 209/8  211/7 212/1 212/17 214/19 216/23  217/22 221/22 223/18 223/20 224/16  230/19 231/22 234/7 234/11 238/2  238/15 238/17 249/16 250/14 253/6  254/18 255/11 255/16 258/10 259/2  259/2 266/2 267/12 274/19 276/9  277/7 277/16 277/24 281/1 281/24  283/19 283/22 284/2 284/6 287/11  287/14 289/9 289/9 289/17 289/19  290/6 290/9 290/22 291/4 291/5  291/22 292/5 299/10 300/2 300/12  301/1 302/13 302/15 304/1 304/15  304/15 305/5 305/7 305/23 305/24  306/11 306/16 307/18 308/16 310/18  311/8 311/8 311/10  allegation [2] 234/19 249/16  allegations [1] 166/12  alleged [4] 4/16 6/23 127/13 308/15  ALLISON [2] 1/13 1/14  allow [5] 93/14 143/10 148/20 221/24  288/18  allowed [4] 6/13 81/9 120/1 145/4  allows [2] 103/22 144/25  alluded [1] 214/15  almost [7] 162/24 191/7 197/12 198/5  225/19 228/21 275/18  alone [3] 99/10 150/15 308/19  along [12] 43/4 76/7 109/16 109/18  109/22 123/8 134/4 141/5 171/4  256/19 294/3 299/10  already [23] 15/21 16/17 16/21 39/17  95/8 137/11 139/24 140/2 145/19  188/18 192/10 204/7 204/9 204/12  204/15 211/22 216/15 224/22 224/24  231/1 265/3 284/9 286/25  also [124] 10/5 10/22 10/23 13/3 13/13  22/6 24/22 37/24 44/22 59/22 79/10  81/10 81/18 86/20 90/15 96/2 97/15  109/22 112/21 122/16 123/2 123/5  132/13 140/21 141/3 141/6 141/23  142/6 143/5 149/18 150/25 154/20  155/13 167/15 167/16 169/6 169/21  170/18 170/20 170/23 171/1 171/14  171/16 171/20 171/20 172/1 174/1  174/6 176/4 177/15 178/14 178/17  178/19 179/2 179/3 179/12 179/13  179/14 181/9 182/14 183/2 183/5  183/8 185/16 185/19 185/22 186/19  188/8 188/10 189/2 189/13 189/14  189/21 196/4 196/5 196/17 196/24  197/9 198/2 198/12 198/18 199/11  201/16 206/16 207/5 208/2 208/6  208/11 208/11 208/12 208/15 209/3  209/3 211/9 211/11 218/24 220/1</p>
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<p>A Case 4:23-cv-00088-CDL Document 383 Filed 03/21/25 Page 317 of 362</p> <p>also... [27] 220/11 220/12 220/14  220/17 220/21 222/19 222/24 223/7  225/6 225/14 225/14 225/15 225/15  226/8 227/4 239/4 245/12 248/5  257/25 258/20 269/4 278/10 281/11  281/12 302/24 303/19 308/17  alteration [2] 6/23 7/20  altered [5] 5/9 6/25 7/13 7/23 7/25  alternative [1] 299/8  although [4] 6/6 66/4 286/22 289/9  alumni [1] 247/13  alveoli [6] 228/3 228/3 228/5 228/18  228/19 228/23  always [11] 12/18 12/20 36/2 36/4  142/19 142/20 195/25 210/13 219/12  299/3 307/20  am [89] 4/9 11/7 12/22 16/6 16/10  22/10 23/14 28/20 40/18 42/10 42/21  42/21 44/19 51/7 52/12 53/14 55/10  61/21 80/8 81/1 83/12 85/10 93/14  104/20 107/24 118/5 119/5 119/8  119/10 129/13 137/14 149/16 152/3  169/11 170/11 170/17 170/18 170/19  171/20 175/5 178/14 178/17 178/18  179/3 179/3 179/3 179/4 179/8 180/19  180/19 180/21 181/15 186/4 195/17  197/22 199/14 218/9 225/23 226/23  231/20 237/20 237/22 244/14 248/20  251/1 252/4 264/22 265/22 266/11  268/10 269/13 272/19 275/18 279/1  282/21 284/9 286/1 290/12 296/22  296/23 299/7 299/10 299/16 300/25  301/7 302/10 302/20 303/4 306/8  amend [1] 107/10  American [5] 71/20 184/19 185/23  250/6 250/17  among [4] 26/19 47/16 130/10 257/20  amongst [1] 107/18  amount [13] 109/20 122/4 122/5 159/1  159/9 195/6 207/5 259/20 259/23  293/10 308/19 310/24 311/2  amplification [1] 59/20  analyses [1] 99/16  analysis [27] 46/25 47/1 47/7 51/18  51/21 52/8 54/5 54/17 54/19 54/24  55/15 55/18 61/4 88/15 89/2 98/14  98/21 115/5 127/5 161/4 161/4 161/5  161/6 161/16 162/2 162/14 224/19  analytical [2] 45/22 46/22  analyzed [3] 53/12 94/9 150/8  analyzing [3] 47/11 83/16 213/8  anatomically [2] 199/15 205/13  anchor [1] 27/15  Andrews [1] 286/25  aneurysm [1] 242/1  angle [19] 21/10 67/22 67/22 71/2  96/23 134/16 134/21 136/3 140/5  153/14 153/15 154/19 154/20 155/12  155/13 155/15 155/16 155/18 198/5  angled [1] 69/1  angles [1] 135/14  angularity [1] 154/14  animation [4] 192/6 192/10 224/22  235/2  annotation [1] 287/12  annotations [2] 287/14 287/15  announced [1] 83/24  annoyed [1] 146/3  Annual [1] 69/9</p>	<p>another [27] 23/15 24/17 25/5 29/24  52/11 57/5 57/23 48/22 49/17 50/11  50/18 118/9 124/1 124/8 142/13  144/10 153/3 160/12 166/2 166/15  166/24 167/14 193/25 222/5 255/13  256/19 262/3  answer [37] 4/17 8/17 9/11 10/22 10/23  14/25 15/1 15/21 15/22 21/13 35/20  41/13 44/6 44/20 45/1 72/15 80/6  83/11 100/11 106/22 159/7 165/16  165/18 165/20 166/1 166/11 166/14  166/16 166/18 167/9 167/16 167/18  238/4 243/10 244/2 244/5 300/9  answered [6] 39/17 39/18 41/10 204/16  242/20 265/3  answers [3] 9/20 9/24 158/24  anterior [2] 195/23 208/25  Anthony [1] 24/17  anti [3] 80/15 143/21 244/1  anti-arhythmic [1] 244/1  anti-Herbst [1] 80/15  anti-submarining [1] 143/21  anticipate [2] 56/5 295/2  antilock [3] 147/10 147/15 148/18  any [126] 7/19 9/11 13/15 16/2 22/2  51/14 51/18 52/14 52/18 53/11 54/17  54/19 55/16 55/22 57/10 58/15 62/24  63/12 73/3 73/9 74/6 78/1 79/1 79/4  80/22 84/11 102/13 103/25 104/2  104/9 104/24 107/16 107/19 107/21  108/20 116/5 116/15 119/4 119/15  128/4 134/25 137/3 139/8 141/25  146/25 147/18 147/19 147/19 151/3  152/14 155/10 162/19 162/25 163/1  168/1 171/12 173/23 173/23 179/2  181/3 181/14 186/2 187/8 188/3  188/11 188/14 189/6 197/14 198/10  200/4 200/17 215/14 217/12 220/5  222/21 223/3 223/5 223/15 226/11  227/11 229/5 229/16 229/19 229/24  230/6 231/6 236/14 236/20 236/23  237/3 239/23 242/2 243/6 243/18  247/24 250/6 250/10 252/4 256/7  263/11 263/22 263/23 266/12 266/21  274/10 280/7 283/23 285/21 285/23  286/18 286/20 287/12 287/12 287/22  289/11 291/21 292/12 293/15 294/12  294/14 295/12 298/2 299/4 306/22  307/13 308/4  anybody [15] 162/25 165/9 180/16  181/10 181/10 181/11 181/12 217/12  242/9 273/3 284/21 285/21 289/11  289/18 306/12  anybody's [2] 83/5 152/2  anymore [3] 194/2 228/6 254/14  anyone [4] 150/23 226/2 280/7 289/10  anything [49] 15/16 18/2 18/11 24/20  35/18 43/6 43/15 44/14 71/17 71/17  98/3 105/15 117/16 117/20 123/6  128/25 129/1 134/24 136/1 151/13  151/23 157/13 157/15 175/15 183/12  184/17 214/20 215/9 222/10 222/11  222/19 224/2 240/12 241/9 243/12  276/3 277/12 278/17 285/15 287/20  289/1 291/4 292/15 292/17 295/12  296/18 302/15 306/11 306/14  anytime [1] 250/17  anyway [1] 138/9  anyways [1] 231/2  anywhere [5] 126/2 253/18 273/15</p>	<p>291/16 302/5  aorta [1] 210/25  apart [2] 196/10 196/11  apologize [5] 46/21 55/5 164/16 264/10  300/15  apparatus [1] 145/4  apparently [3] 33/6 157/12 299/6  appeal [1] 307/15  appear [1] 210/6  APPEARANCES [1] 1/11  appeared [2] 34/20 222/10  appears [3] 31/16 33/16 49/6  applicable [2] 48/20 304/11  applicants [1] 177/17  application [2] 76/18 92/2  applications [3] 67/5 67/6 86/17  applied [10] 58/7 58/18 59/19 62/20  62/25 128/23 147/19 169/11 176/19  178/15  applies [1] 128/14  apply [15] 56/17 56/20 56/22 57/9  57/10 57/11 69/13 84/1 107/5 176/19  303/4 303/12 303/16 304/15 305/21  applying [1] 66/2  appointment [1] 237/19  appreciate [2] 105/19 162/5  appreciates [1] 174/21  approaches [1] 109/16  appropriate [1] 165/11  appropriated [1] 15/9  appropriately [1] 186/11  approval [1] 124/20  approve [1] 119/24  approved [1] 52/13  approximately [4] 74/3 117/12 172/12  190/18  April [16] 45/12 45/23 48/20 49/14  51/19 54/6 73/21 88/15 89/1 257/6  257/12 257/18 257/25 258/12 273/18  276/16  arbitrary [2] 109/12 109/21  arch [3] 29/11 29/16 30/10  are [520]  area [26] 25/8 32/19 38/20 38/20 39/5  39/17 80/11 95/23 96/1 98/10 115/8  117/22 118/24 129/5 133/23 133/24  134/7 136/18 136/21 137/16 150/8  150/17 151/24 173/12 185/12 224/20  areas [5] 30/15 30/19 120/7 144/5  187/1  aren't [9] 51/23 103/8 154/5 181/13  194/1 209/24 219/18 221/7 231/2  argue [11] 7/11 28/16 127/19 288/3  291/5 293/2 294/6 299/17 299/17  299/21 305/7  argued [5] 146/16 147/23 148/10 302/8  304/23  arguing [2] 34/7 295/5  argument [11] 100/21 288/17 298/5  300/3 300/6 300/22 300/23 305/2  310/15 310/18 311/7  argumentative [1] 44/25  arguments [3] 287/18 288/3 295/2  arhythmic [1] 244/1  arm [18] 134/23 135/5 135/14 138/2  138/3 150/15 150/24 154/19 155/9  155/16 193/6 207/18 235/5 284/19  284/22 285/25 297/5 297/24  around [19] 13/1 20/21 20/22 39/8  40/11 42/6 55/13 56/12 62/2 62/14</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p><b>A</b></p> <p>around... [9] 62/22 78/24 110/8 130/14 145/24 216/6 216/13 216/15 254/13</p> <p>arrow [1] 209/23</p> <p>arrows [1] 209/21</p> <p>arteries [2] 183/2 183/12</p> <p>artery [3] 218/11 237/13 241/21</p> <p>artful [1] 55/13</p> <p>article [4] 212/24 213/6 266/18 266/22</p> <p>articles [1] 266/12</p> <p>as [280] 4/10 4/24 5/25 6/20 7/10 7/19 7/22 8/17 10/23 14/8 15/9 15/17 16/13 16/16 19/12 22/5 23/21 24/22 25/24 25/25 26/15 30/10 32/13 33/15 34/20 35/17 41/1 41/6 41/6 41/8 41/14 44/1 44/1 47/24 53/9 53/13 53/14 54/22 54/22 55/16 55/25 56/21 59/6 59/7 59/22 60/9 61/5 62/18 63/18 64/15 64/15 65/16 65/25 66/20 68/3 68/16 68/23 69/22 72/8 73/7 73/20 74/11 76/12 76/24 77/1 77/3 77/22 81/13 81/13 82/24 82/25 84/9 89/4 89/5 89/6 92/4 95/24 96/23 97/13 101/16 103/17 103/21 106/18 107/7 107/22 107/24 109/20 109/24 109/24 110/21 111/10 112/14 113/11 113/21 113/25 114/23 115/19 118/11 119/2 120/3 120/14 122/2 125/15 126/9 129/16 129/17 129/23 129/24 130/1 132/6 132/12 133/12 134/1 136/11 136/20 136/20 138/10 138/24 140/8 141/16 142/6 144/1 144/15 144/18 144/18 145/2 145/5 145/13 146/10 146/11 146/17 152/15 156/14 157/22 157/23 158/12 163/15 163/15 163/17 165/14 166/18 168/22 171/18 172/12 172/16 172/25 174/8 175/6 175/7 175/7 178/6 180/13 186/7 186/8 186/23 187/20 188/21 190/17 190/23 191/22 192/23 193/5 195/11 196/15 197/10 198/20 200/20 204/16 204/20 205/14 208/25 210/19 210/20 210/24 211/1 211/5 211/15 212/16 213/7 213/25 218/2 218/24 219/1 219/17 220/25 221/8 224/1 224/5 224/13 224/20 227/19 228/6 228/7 228/15 228/15 228/18 228/19 229/11 230/2 230/14 232/6 232/25 236/1 237/16 238/10 242/8 242/21 243/7 245/3 246/16 246/24 252/1 252/12 253/7 258/12 260/20 264/4 266/1 266/9 266/21 266/23 267/2 269/16 270/7 270/11 270/25 274/15 274/18 277/2 277/2 277/21 280/22 280/24 280/25 281/14 284/3 284/15 285/13 288/9 288/9 288/25 288/25 289/2 289/2 289/22 289/22 289/24 290/14 290/14 290/22 290/24 290/25 291/3 291/20 292/4 292/9 292/23 292/25 292/25 292/25 295/17 296/13 297/5 297/5 298/7 300/7 300/7 300/11 300/12 300/16 300/18 300/19 301/19 304/21 307/2 308/11 308/12 310/1 310/2 310/5</p> <p>aside [3] 64/15 65/25 102/24</p> <p>ask [55] 14/7 14/24 15/21 18/17 23/4 40/7 41/8 68/25 70/1 72/25 73/7 78/23 83/9 83/18 91/8 102/24 104/13 109/4 109/8 110/1 115/11 128/20 147/8 160/25 167/5 192/19 195/18 197/4 221/9 227/4 236/19 236/22 237/2</p>	<p>237/25 238/4 238/16 242/20 244/8 251/7 250/13 257/5 265/10 263/13 276/7 283/3 283/3 285/9 291/17 292/14 306/25 310/14 310/15 310/23 311/1 311/5</p> <p>asked [34] 15/2 25/14 39/16 39/17 40/1 41/10 70/14 88/14 95/13 102/19 109/9 158/25 180/20 188/24 192/8 204/15 204/16 212/8 212/22 215/14 225/8 231/15 238/15 238/24 244/9 255/24 258/25 263/15 267/4 267/11 282/3 283/5 283/7 285/23</p> <p>asking [20] 22/19 31/20 40/2 41/5 42/5 107/14 107/15 149/24 230/5 250/13 250/15 250/16 250/20 261/23 268/1 296/22 296/23 310/6 310/16 311/1</p> <p>aspect [2] 44/15 296/8</p> <p>aspects [2] 41/12 281/24</p> <p>asphyxia [17] 79/12 170/25 171/1 171/18 207/9 207/10 221/9 221/15 221/17 221/21 223/5 224/6 230/3 251/13 251/14 253/16 254/7</p> <p>asphyxiated [1] 199/13</p> <p>asphyxiation [8] 41/7 266/7 266/9 266/13 266/19 266/22 266/24 267/1</p> <p>assembled [3] 26/16 55/21 56/3</p> <p>assembly [3] 124/23 125/7 125/10</p> <p>assert [2] 6/19 270/10</p> <p>assess [1] 18/6</p> <p>assessment [2] 71/20 269/17</p> <p>assist [3] 172/16 174/8 179/25</p> <p>assistance [3] 111/11 162/6 192/6</p> <p>assisted [3] 47/2 54/24 222/19</p> <p>associate [4] 169/6 169/7 169/9 169/11</p> <p>associated [2] 44/3 58/24</p> <p>Association [1] 119/13</p> <p>assume [12] 30/6 38/9 39/7 40/10 41/5 61/18 61/23 100/21 157/5 239/3 273/4 283/8</p> <p>assumed [2] 56/8 292/10</p> <p>assuming [1] 309/18</p> <p>assumption [2] 31/20 32/10</p> <p>at [355]</p> <p>atherosclerosis [1] 239/20</p> <p>ATLANTA [5] 1/15 1/24 2/2 2/5 2/10</p> <p>atrial [1] 181/10</p> <p>atrophy [1] 227/21</p> <p>attach [1] 16/19</p> <p>attached [3] 17/5 48/13 91/19</p> <p>attachment [1] 34/14</p> <p>attack [14] 180/23 180/24 181/5 181/7 182/1 182/18 220/22 235/23 239/18 239/21 242/5 242/6 276/3 299/9</p> <p>attacks [1] 181/8</p> <p>attempts [2] 252/21 252/22</p> <p>attend [4] 111/23 265/8 265/10 265/13</p> <p>attended [2] 256/16 291/21</p> <p>attending [1] 176/17</p> <p>attention [4] 106/2 293/11 294/23 301/9</p> <p>attorney's [1] 308/13</p> <p>attorneys [6] 10/9 10/15 10/18 13/21 13/24 111/11</p> <p>attribute [1] 142/17</p> <p>August [9] 50/15 51/11 160/2 161/10 237/3 275/19 276/24 276/24 277/9</p> <p>AUSTIN [1] 2/6</p> <p>authentic [1] 73/7</p> <p>authenticity [2] 72/13 72/17</p> <p>authored [1] 266/18</p>	<p>authorized [3] 265/4 265/6 282/24</p> <p>auto [3] 96/17 98/11 122/21</p> <p>Autoliv [10] 37/1 37/3 37/7 37/15 37/18 42/3 101/13 122/24 122/25 123/1</p> <p>automaker [7] 12/18 14/20 246/16 248/12 250/3 250/7 250/11</p> <p>automaker's [1] 13/3</p> <p>automakers [12] 83/20 84/9 99/3 99/6 153/23 154/1 158/9 158/11 246/25 248/17 251/4 277/16</p> <p>automate [1] 112/5</p> <p>Automobile [1] 245/1</p> <p>automotive [13] 81/9 112/8 119/7 119/14 161/17 161/21 162/1 172/24 244/18 244/22 244/24 246/19 246/21</p> <p>autopsied [1] 241/19</p> <p>autopsies [8] 179/17 214/16 214/17 265/5 265/7 275/19 275/22 275/25</p> <p>autopsy [15] 170/17 170/19 179/18 213/8 265/8 265/10 265/13 265/17 276/2 276/24 277/2 277/9 277/12 282/3 291/21</p> <p>available [7] 25/23 188/17 198/13 200/17 200/18 258/11 292/19</p> <p>average [2] 49/11 114/7</p> <p>award [2] 69/13 69/14</p> <p>Awards [1] 69/9</p> <p>aware [31] 14/4 22/10 23/25 48/24 51/21 53/5 53/9 60/24 73/16 80/1 80/4 81/1 85/10 104/20 106/18 137/3 152/7 152/10 153/7 153/18 156/17 156/22 157/2 170/4 170/6 170/8 251/24 279/24 282/21 286/1 301/19</p> <p>away [8] 20/12 48/8 112/25 144/12 186/16 192/23 193/20 205/7</p> <p>awful [1] 252/3</p> <p>awning [1] 184/13</p> <p>axis [1] 269/9</p> <hr/> <p><b>B</b></p> <p>B-Pillar [2] 199/9 199/10</p> <p>B-Pillars [1] 199/9</p> <p>B-U-R-N-E-T-T [1] 110/18</p> <p>B-van [1] 174/1</p> <p>baby's [1] 182/15</p> <p>babysit [1] 245/10</p> <p>bachelors [1] 111/24</p> <p>back [92] 4/8 4/22 4/22 11/17 15/9 15/11 16/4 16/10 16/20 16/22 18/24 19/2 22/9 26/20 33/1 34/23 34/24 35/21 36/13 39/1 43/23 44/8 47/13 54/22 55/14 59/1 63/20 71/4 81/1 92/11 92/14 104/4 112/25 115/18 116/23 124/6 130/18 147/13 154/12 162/24 163/2 164/17 164/20 165/22 174/21 178/6 183/17 184/6 185/18 186/19 190/25 191/13 194/22 194/23 195/3 195/4 195/12 196/19 198/10 198/19 201/10 202/3 204/2 206/1 208/17 208/19 209/8 210/10 212/7 214/11 215/24 215/25 216/1 216/1 216/6 216/14 217/4 218/9 218/15 219/13 234/24 235/3 235/5 243/20 245/23 247/12 254/13 255/6 264/10 286/20 287/14 288/2</p> <p>background [5] 171/24 172/24 176/10 185/15 266/4</p> <p>backup [1] 204/10</p> <p>backwards [1] 23/12</p> <p>backyard [1] 246/20</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------



B Case 4:23-cv-00088-CDL Document 383 Filed 03/21/25 Page 319 of 362		
<p>bacteria [2] 230/25 231/3  bacterial [1] 228/2  bad [18] 5/19 91/15 231/4 253/1 308/1  308/3 308/5 308/12 308/14 308/19  308/20 308/23 308/24 309/5 309/16  310/1 310/4 310/4  bag [3] 139/22 139/23 142/5  BAILEY [1] 1/13  Bainbridge [2] 285/18 285/23  balances [1] 193/14  ball [3] 215/24 222/18 230/22  ballistic [1] 190/22  bands [1] 269/9  Barboursville [4] 231/19 231/20 231/22  244/11  bare [1] 68/13  barely [1] 70/23  barometer [1] 230/21  barrel [1] 68/10  barrier [2] 118/8 188/19  base [1] 63/12  based [47] 4/11 5/9 22/19 22/20 40/4  51/24 51/25 66/24 78/6 84/19 98/9  98/20 150/15 150/20 150/22 151/23  155/18 156/7 170/16 170/19 170/23  171/16 171/19 184/15 186/9 193/7  194/25 201/11 211/6 222/20 258/22  260/15 261/23 264/7 272/2 272/6  272/7 277/7 277/20 277/21 281/2  284/25 289/12 290/4 291/4 292/5  292/11  basic [2] 109/24 161/11  basically [9] 16/10 16/12 16/24 42/25  144/4 173/21 174/11 179/5 206/10  basing [1] 292/7  basis [8] 74/9 103/25 104/2 190/14  295/22 296/3 296/5 296/9  bath [1] 308/15  be [252] 4/6 4/15 5/24 6/3 7/16 9/18  9/25 10/7 10/8 11/3 12/3 12/14 12/22  13/17 14/5 14/12 15/23 16/23 18/19  19/17 21/7 22/12 22/22 28/22 29/19  31/13 31/21 32/20 32/21 32/23 33/2  33/12 33/16 35/22 35/25 36/5 37/21  38/12 38/22 38/24 39/6 40/12 40/17  40/25 41/17 44/2 45/21 46/14 49/6  50/4 50/10 51/8 51/22 54/20 54/25  55/17 56/14 58/6 58/20 59/1 59/2  59/14 60/3 65/10 66/7 68/1 71/2 73/7  75/15 76/18 79/23 80/11 80/15 83/10  85/16 86/14 88/23 89/5 89/12 94/7  94/20 95/14 96/13 100/24 101/3 102/7  102/23 103/7 105/4 107/20 108/23  109/4 109/8 109/12 110/12 113/12  114/8 115/9 120/1 121/11 121/21  121/22 122/4 122/4 122/11 123/21  123/24 124/13 124/14 124/15 124/15  125/2 125/7 125/11 125/13 125/19  131/14 132/1 133/25 134/23 134/23  136/15 136/23 146/4 146/9 147/25  148/12 148/15 154/11 154/25 159/18  160/2 160/10 160/11 160/12 164/4  164/11 164/17 165/1 166/17 167/1  167/6 167/17 167/17 167/21 168/10  168/13 169/25 171/3 176/17 179/7  180/1 181/16 181/18 182/10 185/2  185/3 185/19 186/18 191/20 192/12  195/20 195/24 199/15 202/8 202/14  202/15 204/14 204/17 205/18 205/20</p>	<p>208/18 208/19 211/1 212/19 212/25  213/11 213/12 214/19 217/7 219/12  219/18 220/16 222/10 223/7 226/4  226/19 226/20 228/11 228/12 230/15  233/24 237/24 238/6 243/2 250/21  251/13 252/13 254/12 255/8 261/16  261/21 262/20 262/21 266/10 270/23  270/25 270/25 271/2 271/3 271/4  271/4 273/10 275/8 278/15 281/22  282/4 287/5 287/25 288/16 289/3  289/6 289/12 289/19 290/10 290/22  290/24 291/7 293/20 294/16 294/19  295/7 295/20 296/11 298/5 298/11  299/3 299/13 300/8 301/4 301/11  303/25 304/3 304/4 304/21 305/4  305/6 305/7 308/20 309/22 310/3  310/6  beat [1] 241/22  beating [1] 183/7  beautiful [1] 231/22  became [3] 49/1 188/20 275/8  because [123] 6/7 7/14 9/7 14/23  14/25 16/17 18/25 19/2 20/9 20/23  21/2 23/20 25/20 28/9 28/17 29/10  29/16 29/17 30/9 30/9 30/12 34/4  36/16 50/9 52/6 57/1 57/10 59/17  59/20 61/22 64/17 65/3 65/15 65/22  66/7 66/13 68/2 75/4 75/17 75/20  75/23 76/17 76/19 78/14 79/8 79/20  91/18 98/14 105/3 134/16 136/8  139/12 148/22 160/2 160/3 163/20  167/1 172/18 176/1 182/2 185/3  188/23 190/3 192/24 193/4 194/6  203/14 203/17 204/18 209/4 211/21  212/6 212/22 213/15 214/9 214/14  216/2 216/9 221/5 223/20 223/25  224/18 225/5 225/6 228/7 229/1 231/1  233/18 234/23 235/23 240/23 240/24  240/25 241/25 242/14 243/18 248/2  248/6 250/7 250/11 252/9 252/16  254/16 254/18 263/3 266/16 267/19  287/25 288/19 294/10 297/13 297/24  298/11 298/22 299/3 299/24 301/7  304/11 305/2 305/2 306/22 307/4  311/7  become [5] 38/3 221/4 228/8 240/12  301/19  bed [1] 122/3  been [136] 5/6 5/8 5/9 5/12 6/18 6/20  7/13 11/5 12/5 13/19 15/11 16/17  20/10 20/12 20/23 23/6 23/16 25/8  26/12 32/18 35/2 36/3 37/11 43/10  52/8 78/3 81/9 82/23 88/21 95/8 96/12  97/8 97/11 97/18 97/23 97/24 98/15  98/21 104/18 107/4 107/11 107/22  108/2 110/20 111/6 111/7 112/4 112/8  112/9 114/2 114/9 114/21 114/22  116/7 116/18 116/19 118/14 118/16  118/18 119/15 127/6 137/11 138/10  139/3 140/3 141/23 145/19 146/3  146/16 147/23 153/20 158/3 158/10  158/11 163/7 163/7 163/8 163/20  163/23 165/25 166/5 168/21 177/18  177/18 179/13 183/23 185/22 189/6  191/22 193/5 198/24 200/9 204/10  204/12 204/15 210/6 210/19 212/16  217/18 218/24 219/1 221/15 222/21  223/10 230/12 233/3 233/17 234/11  234/11 243/9 247/8 247/17 247/24  251/12 252/8 254/3 254/20 255/22</p>	<p>258/5 260/6 262/6 266/16 271/19  279/15 279/25 284/9 284/14 285/16  285/20 287/13 290/5 294/14 294/14  294/19 299/3 304/23  before [69] 1/9 4/7 7/18 7/21 19/8  26/10 33/7 43/24 44/9 49/4 51/15 54/6  54/22 55/15 59/18 69/5 69/17 72/20  83/11 88/14 96/14 104/12 106/1 107/3  111/13 115/5 115/21 119/17 120/1  121/12 140/13 141/12 147/20 165/22  171/23 172/22 174/3 176/19 184/7  187/9 188/19 190/19 193/19 200/9  201/18 201/19 201/20 201/21 204/22  206/17 212/11 213/16 217/23 218/8  232/9 232/10 239/25 240/15 241/6  252/5 258/25 258/25 259/4 276/21  279/22 280/1 286/10 291/5 299/18  beg [1] 156/20  begin [2] 106/1 288/6  beginning [4] 66/17 120/14 121/10  267/21  begins [1] 19/22  behalf [10] 10/18 14/5 114/21 114/22  166/13 232/1 232/7 232/25 233/25  236/7  behind [18] 76/13 133/17 133/20 134/6  135/9 135/10 136/2 136/15 153/4  153/8 154/4 154/11 155/5 216/11  223/1 234/24 235/3 235/5  being [49] 11/18 16/16 39/13 40/13  45/6 46/19 46/22 56/2 58/4 58/8 58/18  64/1 66/14 73/9 75/23 79/22 94/10  95/3 100/9 100/10 107/7 109/15  113/22 134/5 134/19 134/19 152/25  154/24 165/11 166/10 166/11 167/15  171/25 172/15 179/24 180/19 180/20  183/25 199/12 199/13 202/25 214/21  227/8 274/3 274/3 274/3 285/14 293/2  309/20  belabor [1] 91/10  belated [1] 259/18  believe [39] 21/25 25/10 37/10 42/19  61/6 69/21 69/25 72/9 87/21 89/18  98/2 106/20 106/25 107/2 107/25  108/18 149/17 191/2 193/5 202/6  206/17 208/4 221/20 222/13 229/18  232/18 241/10 254/23 261/7 265/16  275/21 279/23 280/2 281/16 285/4  295/4 298/14 303/11 306/23  believes [2] 5/8 6/22  bell [1] 295/12  belongs [1] 9/3  below [9] 53/21 57/23 92/20 101/6  203/17 203/19 203/21 207/4 210/16  belt [72] 128/23 133/11 133/11 134/16  134/19 134/20 134/20 134/22 134/22  135/13 135/13 136/9 136/14 138/6  141/2 141/9 141/11 141/12 142/20  150/13 150/13 150/18 150/19 151/4  151/6 151/15 152/8 152/25 153/4  153/8 153/8 154/4 154/10 154/11  154/16 155/5 155/8 155/11 188/23  189/4 192/25 193/6 193/8 193/9 194/5  195/11 196/6 197/15 197/16 198/4  198/5 198/6 198/7 198/7 207/17  207/21 207/21 208/3 208/6 208/8  224/17 225/5 225/15 225/22 226/3  226/3 226/5 294/15 297/14 297/17  297/20 298/2  belted [3] 189/3 190/7 192/25</p>

<p><b>B</b> Case 4:23-cv-00088-CDL Document 383 Filed 03/21/25 Page 329 of 362</p> <p>beltline [1] 17/10  belts [6] 135/9 137/18 144/18 146/13 173/19 194/11  bench [1] 290/17  bend [6] 27/11 38/18 92/4 143/10 145/5 205/21  bending [4] 39/3 91/25 91/25 222/3  bends [3] 32/22 97/13 97/19  benefit [7] 43/14 43/22 44/1 44/8 194/4 194/5 215/17  benign [1] 175/16  bent [5] 145/11 205/17 205/21 205/22 267/20  best [7] 8/18 26/4 53/10 99/13 103/14 114/19 148/13  beta [1] 244/1  better [10] 8/25 36/3 47/10 48/15 76/21 82/24 121/21 194/16 289/6 301/25  between [33] 27/15 30/24 35/13 35/14 39/11 39/13 40/13 43/11 46/5 46/21 50/6 54/17 55/8 64/13 78/19 83/14 84/11 107/10 134/21 135/12 136/14 155/10 156/3 196/12 216/8 251/18 251/21 252/1 253/7 253/7 254/1 276/18 298/6  beyond [1] 88/8  biased [2] 64/19 64/20  bid [1] 241/17  big [21] 16/18 58/20 83/4 124/24 126/14 128/22 173/17 193/1 193/12 196/18 207/25 214/7 218/5 219/22 219/22 225/10 225/13 226/13 228/8 275/2 301/8  bigger [8] 53/20 64/6 210/6 220/9 225/8 225/10 225/11 227/17  bill [1] 160/21  billed [1] 159/12  bills [1] 160/21  bio [5] 38/20 79/19 79/21 80/24 81/13  bio-fidelity [4] 79/19 79/21 80/24 81/13  biofidelic [1] 80/10  biomechanic [7] 169/13 172/16 174/8 178/15 186/24 200/11 211/5  biomechanic's [1] 143/15  biomechanical [8] 39/21 80/7 102/7 127/5 169/12 185/15 187/6 226/7  biomechanics [12] 169/12 172/7 172/20 173/11 180/11 185/22 189/15 200/2 246/11 257/9 257/14 258/7  BiPAP [3] 228/20 228/22 228/25  BIRMINGHAM [1] 2/8  bit [35] 50/8 53/18 57/5 59/24 65/11 65/15 70/18 83/7 111/16 118/10 120/21 124/24 134/8 141/11 141/13 141/14 161/1 171/25 172/3 193/2 193/9 198/24 202/8 205/6 205/7 206/10 210/6 220/23 225/8 225/11 226/18 227/19 227/20 227/20 271/19  black [5] 138/4 138/24 171/3 215/6 215/8  blacked [1] 186/14  blackout [1] 186/12  blame [1] 300/25  blamed [1] 275/13  blaming [1] 16/2  bleb [1] 228/8  bleed [4] 216/25 217/1 227/17 286/8  bleeding [3] 212/11 212/12 226/16  bleeds [1] 229/21</p>	<p>blink [2] 113/9 175/9  blocked [1] 241/22  blockers [2] 173/19 244/1  blood [11] 181/14 183/3 193/2 213/20 217/17 220/8 220/15 226/11 226/16 226/17 227/14  blow [3] 134/7 139/12 147/9  blue [2] 168/1 209/23  BMI [1] 220/16  BMW [1] 249/7  board [6] 185/22 186/4 186/7 186/8 186/9 237/18  boards [1] 185/24  bodies [6] 137/8 197/17 197/18 198/9 277/3 282/2  body [24] 137/14 141/10 144/5 144/18 154/16 155/9 155/13 173/17 174/12 174/13 179/10 179/16 183/3 195/22 195/24 208/9 208/11 208/20 210/2 217/5 222/15 224/25 257/9 257/15  bodycam [5] 170/24 171/20 188/6 198/18 198/19  bold [2] 9/21 123/9  bolster [2] 144/9 144/10  bone [2] 209/5 213/18  bones [1] 214/5  bony [1] 263/23  book [3] 185/19 240/19 266/22  books [1] 266/23  BOORMAN [2] 2/4 164/9  booster [3] 234/4 234/17 234/22  born [2] 89/7 244/14  both [23] 29/7 33/6 33/21 48/12 68/2 75/3 82/8 89/23 96/20 132/17 132/19 134/21 150/13 169/13 172/15 172/18 182/6 188/9 193/11 194/11 223/14 304/24 306/24  bottle [1] 264/13  bottom [18] 20/4 20/12 20/15 38/2 38/8 39/15 40/14 41/8 41/16 82/9 82/18 83/15 89/23 91/19 96/3 103/9 196/15 210/10  bought [4] 36/16 36/25 272/13 272/15  bounce [2] 192/17 194/22  bows [7] 26/25 50/23 50/24 51/3 51/5 51/8 51/12  box [6] 1/16 138/4 138/24 171/3 215/6 215/8  boy [3] 234/15 234/24 235/9  boy's [1] 234/21  brags [1] 246/18  brain [8] 214/4 216/22 226/14 227/18 227/19 229/21 264/6 264/7  brake [1] 147/22  brakes [6] 147/15 147/24 148/12 148/15 148/16 148/23  braking [4] 147/10 147/19 148/18 215/9  breadth [1] 83/2  break [9] 17/25 105/20 109/7 162/23 215/25 230/14 252/18 252/21 255/5  breaking [4] 147/22 208/24 213/22 227/21  breaks [1] 128/9  breath [3] 221/24 222/5 230/7  breathe [2] 222/5 230/7  breathing [8] 230/5 253/11 253/12 254/11 254/14 254/16 254/16 254/17  BRENNAN [1] 1/13  Brian [22] 5/21 5/22 7/18 8/5 21/18</p>	<p>23/4 63/1 80/19 87/2 87/8 87/14 87/19 89/22 89/22 90/7 94/19 94/20 97/9 97/11 98/12 99/3 102/21  Brian's [3] 5/23 80/23 93/9  bridge [1] 194/20  bridging [1] 227/21  brief [4] 171/9 290/10 290/14 306/14  briefly [11] 98/25 155/22 166/4 170/14 209/16 210/9 224/18 282/15 283/24 290/9 303/8  bring [17] 10/20 36/1 39/7 45/17 106/1 110/3 150/21 164/4 164/23 181/22 247/5 255/12 288/22 288/23 288/24 289/5 301/7  bring 169 [1] 45/17  broad [1] 44/15  broader [1] 86/17  broadly [1] 120/9  BROGDON [1] 1/4  broke [5] 18/7 196/4 196/5 199/6 231/2  broken [6] 17/18 196/3 208/24 252/10 253/10 254/2  brother [2] 245/3 245/12  brother-in-law [2] 245/3 245/12  brothers [1] 220/21  brought [6] 122/16 145/21 234/14 234/15 254/22 294/10  bruise [2] 267/19 267/24  bruises [1] 263/22  bruising [4] 193/2 207/19 223/2 223/3  Buchner [6] 23/5 29/24 94/20 115/20 115/24 296/19  Buchner's [2] 93/22 94/17  buckle [7] 29/7 32/20 91/25 132/10 133/10 152/19 285/12  buckled [2] 138/7 138/9  buckling [1] 34/6  Buick [1] 245/1  build [9] 118/12 122/10 122/12 123/23 123/25 124/25 125/2 228/2 230/25  built [14] 38/17 82/23 122/10 123/24 124/3 124/3 124/4 124/11 124/12 124/13 124/14 124/15 125/6 142/14  bunch [8] 74/13 132/9 139/3 196/23 214/10 223/23 231/1 288/24  buried [1] 8/22  BURNETT [37] 3/3 108/22 110/6 110/17 110/19 110/24 117/5 120/3 120/23 121/1 123/12 125/15 127/2 127/16 128/15 129/10 129/19 130/24 131/9 134/7 135/15 135/22 137/3 137/24 138/21 140/13 145/20 148/10 149/11 149/16 159/2 159/9 159/22 164/8 174/22 189/20 303/20  Burnett's [6] 116/12 123/4 132/25 159/13 159/19 268/13  buses [1] 67/4  businesses [1] 297/9  but [273] 4/22 5/3 5/22 6/3 7/4 7/7 8/3 9/2 9/11 9/25 10/17 13/23 13/25 15/22 18/25 21/9 22/9 23/17 25/7 27/5 27/11 28/12 28/17 29/9 29/17 29/19 30/4 30/17 33/10 34/8 36/5 36/16 36/21 37/20 40/7 40/18 41/1 41/2 42/19 42/21 42/23 42/25 43/20 44/3 44/12 44/22 45/24 46/2 46/8 46/18 48/15 49/3 50/8 51/21 52/6 52/24 53/16 53/24 57/6 57/24 58/5 58/19 59/2 59/13 59/22 60/23 61/17 61/22 62/9 64/1 65/9 65/13 65/22 65/25 65/25</p>
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--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------



**B** Case 4:23-cv-00088-CDL Document 353 Filed 03/21/25 Page 321 of 362  
but... [198] 66/5 66/7 70/17 70/22 71/1  
71/23 73/7 78/4 79/10 81/1 82/14  
83/10 83/19 84/8 84/21 85/10 87/1  
89/19 97/2 100/16 100/18 101/22  
102/23 103/17 104/20 107/1 108/4  
109/8 109/16 109/18 109/21 109/24  
110/13 111/20 113/21 115/16 123/14  
123/23 125/4 125/8 126/11 129/11  
131/18 132/13 133/18 134/3 134/8  
134/10 139/3 140/11 142/21 143/24  
145/24 149/9 150/22 152/24 153/15  
154/13 154/14 154/16 154/20 155/1  
155/9 155/12 157/3 157/13 158/11  
159/18 159/25 160/17 161/11 161/24  
163/7 163/17 164/17 165/1 167/24  
168/11 177/25 182/21 183/8 184/7  
188/22 192/17 192/22 193/3 193/8  
194/4 194/7 194/19 195/10 195/16  
195/18 198/1 198/6 198/9 202/10  
204/14 205/6 209/3 209/25 212/12  
212/16 212/19 214/19 216/7 216/8  
217/12 218/2 218/12 219/1 219/13  
219/16 220/6 220/12 220/22 220/22  
221/16 221/19 223/19 223/21 225/13  
225/17 225/25 226/11 226/18 226/23  
227/3 227/15 228/18 230/24 231/21  
232/11 232/14 234/22 235/12 237/19  
241/23 243/7 243/9 243/17 244/7  
244/12 244/25 245/14 247/4 247/7  
248/5 248/7 248/18 251/11 251/15  
253/24 254/13 254/20 255/14 256/9  
259/4 261/21 263/11 263/22 265/3  
266/11 266/17 269/2 270/1 270/6  
275/10 275/15 275/24 276/20 277/24  
282/21 284/8 287/18 287/25 288/11  
289/5 291/16 292/9 293/3 293/16  
293/25 294/15 295/12 295/22 296/9  
296/18 297/16 297/21 297/23 298/7  
300/23 305/24 308/20 309/21 309/25  
310/4  
BUTLER [12] 1/20 163/16 239/5 284/8  
286/21 287/20 291/6 293/2 299/24  
300/20 303/9 306/25  
BUTLERPRATHER.COM [4] 1/14 1/15  
1/19 1/21  
buy [3] 86/15 288/18 288/21

**C**  
C1 [1] 216/23  
C2 [1] 216/23  
cab [15] 50/25 50/25 51/1 54/9 88/2  
88/2 88/5 100/19 122/3 130/7 192/22  
221/25 222/13 222/15 222/16  
cab/crew [1] 50/25  
cage [8] 78/24 79/9 96/8 103/17  
208/17 208/25 225/21 225/23  
calculate [2] 64/5 74/19  
calculated [5] 56/24 73/17 77/16 78/4  
78/6  
calculation [2] 75/20 76/1  
calculations [1] 77/18  
calculator [4] 56/13 56/15 64/1 74/18  
calendar [2] 36/25 37/1  
call [53] 19/23 19/25 25/3 25/7 27/4  
27/19 50/5 60/5 88/6 90/10 110/5  
124/1 124/9 125/1 125/5 128/12  
131/23 139/19 168/2 168/3 173/19  
176/16 177/13 179/9 182/2 190/21  
191/8 210/6 215/5 215/6 215/20 216/8

217/11 220/17 227/6 235/19 235/22  
236/22 237/1 237/6 238/20 239/24  
240/3 244/7 248/6 251/15 278/5  
278/10 278/19 283/3 283/25 284/1  
291/18  
called [36] 5/21 50/9 63/5 66/24 78/18  
88/23 101/21 103/17 111/5 117/5  
119/9 121/13 122/6 122/7 124/17  
128/8 128/11 141/4 161/3 173/25  
184/25 191/4 216/18 230/21 233/11  
242/11 242/23 244/3 266/1 268/2  
268/6 268/25 269/18 279/16 291/21  
293/8  
calling [3] 12/5 27/14 28/23  
calls [8] 110/6 114/25 115/2 165/23  
216/9 248/4 277/19 278/1  
cam [4] 17/24 188/7 252/23 252/24  
Camacho [20] 137/7 137/8 137/24  
176/5 195/14 197/24 207/19 210/21  
211/8 211/9 211/16 211/17 211/22  
212/9 212/18 212/20 212/22 222/20  
225/8 278/11  
Camacho's [6] 138/1 195/12 209/10  
209/15 210/8 212/1  
came [28] 7/17 70/11 101/12 119/25  
139/14 143/20 145/16 146/11 190/9  
196/15 197/10 199/6 207/24 209/23  
226/23 227/16 235/1 254/13 268/14  
277/5 277/17 277/20 278/7 279/5  
279/10 281/23 301/13 301/21  
camera [1] 130/23  
cameras [6] 130/13 130/14 130/15  
130/15 130/17 130/22  
can [252] 4/17 5/18 7/11 7/15 8/7 9/6  
10/5 13/12 15/1 19/19 19/20 19/20  
20/7 21/7 21/7 21/16 27/10 28/2 29/16  
30/14 32/9 32/13 32/25 35/11 36/1  
38/8 39/23 40/16 41/13 45/15 46/17  
50/23 53/18 53/20 55/19 57/7 57/8  
57/10 58/24 59/12 60/3 60/8 60/8 62/6  
68/1 72/15 78/2 79/15 83/16 86/14  
89/9 89/10 89/17 89/17 90/20 94/3  
94/18 95/23 96/18 97/9 97/22 98/9  
98/9 102/1 102/12 102/18 109/1 114/8  
115/12 116/22 117/12 120/15 120/19  
120/21 121/2 121/17 121/17 124/7  
125/2 125/2 125/12 125/14 126/1  
126/10 126/11 126/12 126/21 128/18  
130/18 130/22 131/11 133/15 133/16  
133/19 133/22 134/3 134/7 136/25  
137/20 138/18 138/19 139/17 140/10  
141/5 141/8 141/10 141/10 142/16  
143/10 143/16 144/19 147/14 148/13  
148/24 149/5 150/23 153/2 153/21  
154/12 154/18 154/19 154/21 155/6  
155/12 155/13 155/15 156/6 158/20  
163/15 164/17 166/8 166/9 166/17  
167/1 167/4 167/16 167/17 174/12  
174/13 174/17 174/18 181/6 182/11  
182/12 183/7 183/17 183/22 186/10  
191/14 192/19 192/23 193/14 194/8  
194/9 194/25 196/7 196/7 197/6  
197/11 198/21 198/24 198/24 199/2  
199/5 199/9 199/11 199/15 202/6  
202/9 202/10 205/8 205/10 205/17  
207/18 207/19 208/21 209/3 209/6  
209/18 209/21 209/24 210/2 210/5  
212/17 212/18 212/25 213/23 214/16  
214/17 215/6 215/25 217/4 217/5  
217/12 217/13 217/18 218/1 218/6

219/9 220/8 220/9 220/13 220/14  
220/16 222/5 222/5 222/25 225/19  
227/9 228/15 228/18 237/21 246/14  
247/11 253/20 254/22 255/6 255/19  
260/24 261/8 261/14 261/17 262/4  
262/14 262/17 262/25 270/21 271/4  
272/22 276/7 280/18 284/5 285/9  
287/17 288/18 288/25 289/5 289/6  
289/19 290/6 290/7 293/2 296/8  
300/12 301/11 303/7 303/25 304/17  
305/13 307/5 309/3 310/3  
can't [44] 20/9 20/23 20/24 20/25 21/7  
21/13 23/9 23/17 24/15 31/7 33/9  
41/13 41/23 49/8 77/23 78/1 79/12  
107/25 131/13 134/18 134/19 135/12  
136/3 146/14 149/9 150/23 152/24  
155/10 155/18 164/16 215/23 227/9  
228/8 230/7 230/7 242/14 242/15  
253/24 261/12 262/2 288/21 294/15  
304/20 311/4  
cancer [1] 279/6  
cannot [1] 80/9  
canopies [1] 142/5  
canopy [2] 101/14 142/6  
cap [2] 129/10 129/14  
capability [1] 86/14  
capacity [1] 158/12  
capped [1] 9/21  
caption [5] 8/9 8/15 9/10 9/19 9/23  
capture [2] 131/11 262/23  
captures [1] 141/20  
car [38] 40/17 57/18 58/3 58/21 68/4  
118/9 122/17 125/2 125/6 125/7  
125/19 126/1 128/7 143/24 144/14  
144/14 144/25 174/17 179/12 184/10  
198/6 199/14 216/25 226/25 227/17  
228/10 230/13 249/18 250/4 250/7  
250/9 250/11 250/13 250/17 250/25  
251/1 251/8 269/17  
cardia [2] 240/3 240/4  
cardiac [40] 171/6 180/14 180/15  
181/9 181/17 182/6 185/16 217/10  
217/12 220/2 223/16 223/17 235/18  
236/23 237/3 238/13 238/15 238/19  
239/14 239/23 240/1 240/20 241/14  
241/18 242/7 243/18 251/9 276/3  
277/1 277/6 277/8 277/13 277/18  
278/8 281/21 298/14 298/19 298/20  
299/16 299/19  
cardiologist [16] 181/16 181/18 217/18  
217/20 218/9 218/10 218/24 218/25  
219/2 236/10 238/11 243/21 244/4  
264/23 264/24 279/21  
cardiologists [4] 182/2 183/15 235/19  
235/22  
cardiology [2] 180/15 240/18  
cardiomegaly [1] 218/5  
care [14] 72/24 75/17 122/18 126/2  
182/3 184/23 185/1 185/4 215/17  
219/18 229/1 229/4 229/8 256/9  
career [9] 112/4 112/18 114/20 116/5  
116/8 118/2 118/4 161/25 183/23  
careers [1] 114/11  
careful [1] 294/19  
carefully [1] 142/17  
Carrollton [1] 111/2  
carry [1] 76/17  
carrying [2] 18/22 19/10  
cars [6] 40/11 124/25 125/5 125/6  
125/12 245/13

C Case 4:23-cv-00088-CDL	Document 383 Filed 03/21/25 Page 322 of 362	
<p>cartilage [1] 209/5  Caruso [4] 47/24 48/23 49/18 50/19  case [138] 4/12 4/12 8/10 14/1 14/19  23/22 26/3 30/21 40/21 41/3 41/4 42/9  42/9 42/12 52/23 60/9 97/8 97/12  105/20 108/2 109/19 109/23 110/12  114/13 115/1 120/14 121/19 123/7  123/11 126/15 127/17 128/1 129/12  129/15 129/25 130/8 130/12 137/4  145/25 151/3 153/5 153/5 154/24  155/4 162/25 165/8 166/2 166/15  166/24 166/24 166/25 167/1 167/2  167/3 167/6 167/14 167/15 167/16  167/17 167/24 168/10 170/4 170/9  187/4 187/8 187/11 187/12 187/17  187/22 187/24 188/16 188/20 189/8  189/25 190/15 191/8 201/14 207/16  210/22 212/5 218/25 221/18 232/11  232/12 232/19 233/1 233/3 233/9  233/11 233/14 233/18 233/23 234/1  234/14 234/20 247/3 247/4 247/9  247/14 247/25 248/4 255/8 257/6  258/2 258/13 259/4 265/8 265/11  265/13 265/17 266/1 273/17 274/15  275/19 281/19 281/20 282/11 282/20  284/9 288/7 288/8 288/15 288/16  289/10 289/23 290/23 291/2 291/3  291/20 291/24 293/1 294/21 295/9  298/11 301/14 302/6 308/16 309/10  cases [20] 12/16 13/2 13/22 14/16 15/2  74/7 97/23 97/24 108/3 109/14 109/18  114/5 115/4 234/7 234/10 246/16  246/25 248/7 249/16 308/24  cash [1] 92/10  catch [1] 144/14  categories [1] 59/7  category [1] 59/2  cath [1] 235/24  caught [1] 251/21  causal [2] 43/10 98/16  causation [6] 186/23 200/12 257/10  257/15 301/10 301/11  cause [25] 4/12 7/5 38/17 90/25 92/6  104/16 169/23 179/14 179/19 179/22  183/22 186/24 238/19 240/12 240/13  263/16 263/18 267/1 267/2 267/22  291/4 293/14 294/16 297/22 298/6  caused [30] 5/10 6/23 8/1 15/24  112/24 136/13 154/21 155/19 156/1  170/9 215/1 221/1 221/3 224/15  229/13 229/14 230/3 234/22 234/22  263/7 267/6 295/6 295/10 295/14  296/4 297/25 298/14 298/23 299/19  302/8  causes [3] 41/12 171/7 228/1  causing [7] 34/13 38/23 39/3 293/10  296/1 296/16 296/25  CC [2] 50/22 50/24  CCR [2] 2/14 312/18  CDL [1] 1/4  CDR [1] 147/8  center [26] 1/25 71/24 169/11 175/24  178/15 180/2 184/22 184/22 261/1  261/2 261/3 261/5 261/9 261/10  261/11 261/12 261/12 261/15 261/18  261/19 261/20 261/25 262/15 262/18  283/15 283/17  centers [2] 184/21 216/24  cents [1] 49/11</p>	<p>cert [2] 126/8 126/14  certain [22] 17/23 47/16 60/18 83/23  99/18 101/11 107/24 122/4 122/5  166/20 166/24 167/5 167/6 179/20  185/2 217/13 221/16 235/25 279/6  279/7 290/6 301/20  certainly [20] 13/19 13/21 18/9 25/16  28/16 32/7 44/4 44/21 46/19 51/22  52/22 77/10 82/23 95/24 96/13 107/20  148/6 288/13 290/10 294/15  certainty [7] 170/2 187/6 220/25 224/5  224/13 229/11 230/2  certificate [2] 179/23 311/14  certify [1] 312/5  cervical [6] 84/17 84/21 196/1 207/23  216/23 229/24  cetera [1] 131/16  chain [1] 298/13  chair [3] 157/25 184/1 293/5  chaired [1] 213/17  challenge [1] 114/8  chambers [2] 183/3 220/8  chance [13] 55/10 179/2 241/13  241/14 269/6 270/23 271/1 271/5  271/8 271/10 271/11 271/25 273/11  change [9] 53/3 76/20 79/13 84/19  105/3 134/21 138/18 155/21 201/11  changed [5] 43/6 44/13 83/12 112/23  259/8  changes [8] 47/20 51/20 51/23 55/19  56/4 73/24 89/5 164/25  changing [6] 76/3 103/13 120/18  155/16 155/17 243/25  chaotic [4] 60/3 138/12 138/15 205/11  chapter [2] 240/19 266/14  chapters [1] 185/20  characteristic [1] 229/15  characteristics [3] 78/13 221/22 221/23  charge [29] 164/24 187/12 291/14  291/14 291/18 293/6 294/3 295/3  295/5 295/11 295/24 300/16 300/18  301/2 301/5 301/6 301/9 302/1 302/2  302/24 303/11 304/7 305/1 306/15  307/3 307/18 307/25 308/2 308/10  charged [1] 13/18  charges [4] 187/22 187/23 307/11  307/17  charging [1] 187/11  CHARLES [1] 1/23  CHARLES.PEELER [1] 1/24  Charlie [1] 114/3  Charlottesville [7] 169/3 169/4 178/13  231/17 231/24 244/10 244/12  chart [7] 61/2 86/3 91/22 110/8 269/8  274/6 274/24  chase [1] 183/7  chassis [4] 88/2 88/5 100/19 173/9  cheating [1] 103/12  check [2] 120/2 260/17  checked [1] 186/17  checks [1] 216/6  chest [11] 143/12 182/20 197/15  197/16 211/13 219/6 219/15 222/24  223/1 241/5 279/25  Chevrolet [3] 76/23 77/10 244/21  Chick [1] 288/24  Chick-fil-A [1] 288/24  chief [1] 264/13  child [7] 234/4 234/10 234/17 235/15  248/15 249/9 249/17</p>	<p>children [1] 245/10  chin [2] 222/24 223/1  chips [1] 288/25  choice [1] 40/11  choked [1] 223/10  choose [2] 173/16 175/25  chose [1] 176/1  Chris [1] 162/10  Christopher [1] 61/9  chronic [1] 228/9  Chrysler [20] 97/24 172/10 172/12  172/23 173/3 173/4 173/6 173/7  175/19 188/21 245/7 245/8 245/14  245/16 245/18 245/19 245/21 245/23  245/25 249/3  Chrysler's [1] 173/22  chuck [1] 100/10  churns [1] 246/24  cigarettes [1] 220/4  cinderblock [1] 196/19  circle [4] 95/1 133/22 133/22 191/15  circled [1] 96/3  circuit [1] 201/13  circumstances [1] 166/25  CIREN [4] 177/7 177/13 177/18 178/2  citation [1] 267/5  cite [1] 309/10  citizen [2] 248/11 248/14  civil [1] 291/24  claim [17] 4/9 4/11 82/7 104/7 123/7  127/11 234/15 242/4 242/6 291/2  291/3 291/25 294/22 297/20 297/23  297/25 304/12  claiming [5] 24/10 298/1 298/22 299/25  305/19  claims [5] 290/2 290/4 290/23 294/20  303/13  clarification [1] 250/13  clarify [2] 191/19 293/12  clarifying [1] 307/2  clarity [1] 21/2  Clark [1] 301/15  classes [2] 84/1 245/22  classic [1] 138/2  classify [1] 273/24  clavicles [1] 225/20  clavicular [1] 225/16  CLAY [1] 1/9  clean [6] 11/7 218/15 218/15 230/24  240/21 241/24  cleaned [1] 307/24  cleanest [1] 4/8  cleanup [1] 11/12  clear [11] 33/12 88/23 103/7 127/12  248/19 278/15 293/20 296/3 296/12  299/3 310/14  clearances [1] 203/1  clearly [4] 5/22 7/10 7/11 309/9  CLEVELAND [1] 2/1  client [2] 13/20 14/17  clients [3] 13/21 13/23 14/16  clinical [2] 176/18 280/4  CLL [1] 225/7  clogged [1] 183/12  close [10] 38/16 42/22 47/4 65/8 165/8  205/10 207/23 289/23 291/6 301/24  closely [1] 124/6  closer [6] 29/5 32/10 34/5 34/10 34/15  76/4  closing [7] 8/7 272/17 287/17 288/3</p>

C Case 4:23-cv-00088-CDL Document 383 Filed 03/21/25 Page 323 of 362		
<p>closing... [3] 295/2 295/13 303/15  co [3] 217/11 230/19 247/13  co-alumni [1] 247/13  co-morbid [2] 217/11 230/19  coated [1] 133/17  Cochran [1] 236/13  code [3] 275/7 301/14 312/6  coded [1] 275/12  Colby [3] 24/4 259/21 259/24  collapse [2] 5/20 261/1  collapsed [2] 260/5 260/24  collar [1] 223/16  colleague [1] 14/1  collection [1] 193/2  college [8] 111/23 111/24 112/4 173/2  184/19 245/6 245/14 245/15  collision [8] 152/20 263/13 264/8 269/1  269/7 270/22 273/12 299/20  collisions [1] 270/18  color [1] 19/20  COLUMBUS [9] 1/2 1/6 1/13 1/16 1/18  1/20 4/5 265/24 265/25  column [8] 131/16 144/23 144/25  145/12 173/20 196/9 205/24 205/25  coma [1] 227/6  combination [4] 155/20 195/10 214/18  231/4  combined [1] 112/2  come [52] 7/15 14/7 28/9 58/9 67/16  69/3 72/12 110/7 112/25 114/18  114/19 123/21 125/16 129/2 140/18  143/18 144/7 144/20 145/8 146/2  162/24 168/5 175/8 181/3 182/2  183/10 183/17 185/6 186/13 187/24  189/24 197/5 216/17 220/24 225/20  229/10 230/1 230/9 237/12 238/11  240/15 255/6 264/10 276/25 282/8  284/2 287/12 288/2 302/9 308/3  310/15 310/17  comes [40] 4/7 7/9 19/25 30/10 34/2  53/13 56/12 58/2 66/11 67/12 74/8  100/9 113/7 140/14 141/20 143/9  165/2 175/11 175/14 180/17 190/23  190/25 190/25 191/3 192/18 192/24  193/19 194/23 195/3 195/4 195/5  195/6 197/12 207/20 208/3 215/16  215/25 216/6 216/14 222/6  comfortable [1] 207/3  comforting [1] 292/24  coming [29] 7/21 34/11 38/13 65/12  68/23 102/1 102/4 113/3 122/14 123/9  130/9 165/5 168/1 181/2 192/5 192/13  192/16 193/4 196/18 201/6 207/21  208/23 209/7 216/16 218/14 219/13  222/23 225/5 241/4  command [1] 186/24  comment [8] 170/17 170/19 170/20  170/23 171/1 171/6 171/17 171/21  commented [1] 53/22  commenting [1] 214/19  comments [4] 84/10 185/18 200/4  291/12  commit [1] 13/15  committee [1] 184/20  common [7] 39/19 39/22 59/15 68/3  68/5 68/10 115/4  commonsense [2] 38/21 38/21  Commonwealth [1] 186/2  communicate [1] 162/4</p>	<p>communicates [1] 160/14  community [1] 213/21  companies [3] 122/19 122/20 158/7  company [24] 1/6 12/6 13/8 37/3 81/2  92/18 98/13 111/5 111/10 111/14  111/15 112/7 153/23 188/8 232/2  232/3 247/22 248/24 286/7 289/21  290/3 293/12 295/25 296/14  Company's [4] 9/23 246/7 296/12  307/17  comparative [6] 296/8 296/24 298/12  299/13 299/22 299/23  compare [5] 22/9 72/20 95/4 184/17  194/13  compared [4] 22/7 62/1 94/13 200/4  compartment [3] 199/2 199/3 199/5  compatible [2] 181/13 221/3  compel [1] 292/13  competitive [1] 177/16  competitor [1] 76/19  competitors [1] 76/14  complaining [2] 243/5 250/22  complaint [5] 9/20 9/24 166/11 166/12  166/14  complete [4] 44/4 118/8 118/9 294/11  completed [5] 124/21 173/10 176/6  176/7 176/9  completely [9] 32/4 38/20 39/5 200/18  234/16 237/11 246/17 251/5 295/21  completeness [2] 9/3 21/19  completion [2] 175/22 175/23  complex [5] 40/20 41/1 41/14 100/11  102/9  complexities [1] 121/5  compliance [4] 127/23 305/5 305/17  305/25  complicated [2] 105/3 120/16  complications [1] 43/9  complied [8] 303/13 303/14 303/14  304/8 304/9 304/9 305/2 305/7  comply [6] 96/10 128/1 304/3 304/11  305/23 305/24  component [7] 50/11 92/5 129/7  131/25 132/1 132/7 132/8  components [15] 7/1 26/14 26/15 37/2  47/21 49/24 51/5 113/11 123/2 132/5  139/13 144/10 174/5 174/12 174/18  compress [4] 27/8 27/11 28/7 225/22  compressed [2] 210/3 210/3  compresses [1] 30/25  compressing [3] 225/21 225/23 225/24  compression [2] 197/11 198/8  comprising [1] 26/14  compromised [4] 16/17 16/21 281/6  281/6  Computed [1] 213/7  computer [15] 47/1 47/4 47/6 47/10  47/12 47/16 51/18 51/21 52/1 54/14  54/24 55/15 88/15 89/2 94/9  concept [2] 57/10 121/11  concern [11] 47/24 48/1 48/3 48/22  49/7 49/9 49/17 49/20 50/18 50/22  108/11  concerned [9] 6/21 41/7 64/16 82/25  101/17 230/6 243/24 297/6 306/13  concerns [3] 53/2 125/11 302/19  conclude [1] 155/18  concluded [1] 311/12  conclusion [3] 39/24 201/7 277/20  conclusions [3] 21/8 119/25 136/3</p>	<p>conclusive [1] 303/17  condition [5] 91/16 197/5 309/7  conditions [10] 47/9 59/17 59/21 60/3  60/8 64/3 96/18 217/11 217/22 230/20  conduct [2] 37/7 259/10  conducted [13] 37/16 37/18 60/21 63/1  82/8 82/12 88/1 130/1 255/25 258/16  259/5 259/12 283/12  conducting [3] 257/20 258/15 259/11  confer [2] 107/18 109/6  conference [6] 164/25 165/1 189/12  278/2 278/7 312/10  conferences [2] 189/7 247/4  configurations [2] 96/15 135/9  confirm [4] 10/13 45/25 127/23 158/23  confirmation [2] 124/9 124/11  confirms [1] 54/19  conflict [1] 163/21  conformance [1] 312/9  confuse [1] 300/24  confused [4] 102/25 165/25 195/25  294/20  confusing [3] 210/13 296/11 303/3  confusion [1] 294/23  conjunction [1] 122/18  connect [2] 27/22 94/18  connected [3] 30/5 209/1 308/15  connection [9] 34/9 108/12 159/12  212/4 245/11 249/18 268/21 307/18  308/2  connections [2] 245/7 246/21  connects [4] 17/1 17/7 29/2 48/11  conscious [3] 222/12 308/21 309/17  consciously [1] 309/6  consciousness [1] 218/18  Consequently [1] 290/24  consider [19] 109/12 137/1 147/25  148/12 180/8 183/9 185/4 198/13  207/5 208/13 209/10 214/25 217/9  217/11 217/22 304/1 304/17 305/16  309/5  consideration [5] 31/6 110/2 172/18  196/17 201/12  considered [12] 6/3 66/4 70/5 84/14  185/3 210/9 220/1 282/10 304/1 304/4  304/21 305/6  considering [1] 83/20  consistent [9] 26/7 46/10 59/4 170/21  171/15 224/16 305/19 308/6 309/21  consisting [1] 26/25  console [28] 24/2 260/5 260/12 260/13  260/24 261/1 261/2 261/3 261/6 261/9  261/10 261/11 261/12 261/13 261/15  261/18 261/19 261/21 262/1 262/15  262/18 280/10 280/11 280/14 280/20  283/15 283/17 287/4  constant [1] 43/2  constantly [4] 73/1 180/19 180/20  180/21  constellation [1] 293/21  constrained [1] 31/11  constraints [1] 32/7  constriction [1] 285/14  construction [1] 187/20  consult [1] 303/8  consultant [1] 160/6  consultation [1] 306/2  consulting [1] 111/10  contact [11] 38/24 64/13 65/7 66/7  68/10 68/22 88/21 94/23 133/12</p>



Case 4:23-cv-00088-CDL Document 383 Filed 03/21/25 Page 324 of 362			
C	contact... [2] 133/25 175/16 contacted [3] 64/22 67/24 133/14 contacting [3] 64/23 65/5 66/5 contain [2] 211/13 257/8 containment [3] 53/7 53/10 140/22 contains [1] 274/6 contemplates [2] 308/21 309/17 contemplating [1] 290/11 contend [9] 293/13 295/13 295/14 295/16 298/7 298/17 298/21 299/6 299/7 contended [1] 293/22 contending [3] 106/23 297/16 298/12 contends [1] 295/25 contention [12] 293/9 296/4 296/12 296/13 296/15 296/21 296/21 296/23 297/1 297/4 298/25 308/5 contentions [1] 166/9 context [3] 8/21 9/2 167/23 contexts [1] 195/20 continue [5] 11/18 183/10 243/23 255/19 289/7 continues [2] 218/20 243/20 contradict [6] 25/16 82/7 151/14 151/24 152/2 296/17 contradictory [1] 296/7 contrary [1] 303/22 contrast [5] 39/1 67/18 214/8 214/9 214/15 contrib [1] 297/25 contribute [3] 170/5 263/17 267/22 contributed [4] 170/9 229/17 229/20 302/8 contributorily [3] 297/4 297/17 298/17 contributory [9] 293/7 294/18 295/23 296/3 296/13 296/14 296/24 297/6 298/25 control [6] 149/3 186/11 191/6 218/18 219/16 221/4 controllable [1] 148/22 controlled [1] 100/10 controlling [1] 242/12 controversy [1] 80/3 contusions [1] 267/17 conversation [1] 227/8 convert [1] 61/20 converted [1] 60/16 conveyance [1] 8/4 cook [1] 264/13 coordinates [1] 183/6 COPD [4] 228/2 228/2 228/4 272/7 copy [3] 269/14 294/24 294/24 corner [5] 35/12 65/2 69/1 71/5 89/23 coronaries [1] 182/13 coronary [10] 183/12 218/11 239/17 240/7 240/8 240/10 240/24 241/21 241/22 241/25 corotid [2] 216/3 216/6 corporate [1] 42/17 Corporation [4] 172/10 172/12 173/4 173/5 correct [335] corrected [4] 274/9 274/12 275/5 275/10 correctly [6] 10/5 10/6 53/22 251/10 293/9 294/21 correlation [4] 43/11 78/19 83/21 84/11 cost [6] 49/11 53/2 53/3 53/6 53/10 147/4	cost containment [1] 53/10 costs [1] 160/20 could [104] 7/6 9/4 14/14 19/19 24/12 28/4 31/23 31/24 31/25 32/1 32/15 33/1 35/21 39/6 41/20 41/25 43/20 43/23 48/9 51/22 53/16 54/22 58/6 60/19 63/25 70/14 77/9 78/9 78/13 79/23 81/23 82/23 96/14 104/1 105/1 116/12 125/7 129/9 135/11 139/12 140/2 147/9 157/19 159/18 160/22 164/20 169/2 170/7 172/23 176/19 178/6 178/7 184/17 192/8 192/10 192/11 198/22 202/3 202/16 202/19 203/20 205/1 208/13 209/13 213/11 213/14 221/6 221/14 222/11 222/21 226/4 233/3 233/17 233/24 237/25 238/5 242/10 242/22 242/25 243/8 243/12 243/14 243/15 244/4 251/8 251/12 252/15 253/4 254/5 254/6 254/15 258/19 260/6 260/19 263/21 265/10 271/2 271/3 282/19 283/3 293/18 296/5 296/11 307/7 could've [3] 266/1 267/16 282/23 couldn't [19] 14/15 24/21 39/2 63/8 79/19 104/7 176/17 203/2 214/12 241/22 242/2 252/13 252/16 253/2 258/22 264/1 266/15 266/17 280/23 counsel [7] 13/7 14/17 107/19 287/17 294/13 300/21 306/10 count [1] 118/17 countries [1] 125/24 country [5] 111/21 231/23 234/7 234/12 234/12 County [15] 6/15 179/4 231/21 232/16 232/22 232/25 233/6 233/15 233/22 234/14 235/10 252/20 264/15 285/18 285/23 couple [12] 4/7 82/24 84/8 86/1 87/22 145/21 165/24 177/11 177/15 284/4 302/16 302/23 course [9] 6/14 42/8 42/11 52/22 106/3 171/11 171/20 230/11 230/13 court [40] 1/1 4/4 6/13 24/8 105/25 106/4 110/16 114/2 158/21 164/3 168/14 232/11 232/12 232/16 232/21 232/24 233/6 233/15 233/19 233/21 233/22 238/11 240/15 246/15 246/16 289/23 289/24 289/25 290/6 290/21 290/23 291/2 301/16 301/21 301/22 306/12 310/1 312/3 312/4 312/19 court's [11] 93/17 106/2 159/7 165/3 291/1 300/9 301/9 308/2 308/12 308/22 309/15 courthouse [1] 288/19 courtroom [10] 11/16 110/4 231/25 232/7 233/5 241/17 247/18 255/18 289/13 289/16 cover [3] 45/21 90/7 140/19 cozy [1] 251/3 CP [1] 124/10 CPAP [1] 228/21 cracks [1] 208/1 crash [117] 15/14 15/17 15/19 17/17 28/12 30/17 35/7 35/22 39/13 40/22 40/24 58/13 59/11 59/25 65/11 66/10 68/17 79/2 79/22 84/20 91/1 92/12 93/23 94/17 94/20 95/15 95/20 95/23 97/6 98/19 100/17 101/22 102/1 102/16 112/23 112/24 113/2 113/4 113/5 113/15 115/8 117/22 118/3	118/5 118/6 118/7 118/12 120/5 124/3 127/5 127/9 129/6 129/10 129/14 129/16 130/11 131/11 131/17 132/16 133/8 133/13 133/15 133/21 133/21 134/2 134/13 138/22 139/14 139/15 139/16 143/8 143/19 144/7 146/9 146/12 147/18 147/20 149/8 153/6 169/18 169/22 170/22 171/16 173/23 174/4 174/7 174/11 174/17 177/8 177/12 180/12 184/14 188/14 188/15 188/16 188/18 188/22 189/2 189/18 193/3 193/13 213/8 216/21 216/25 221/7 223/24 226/13 228/10 232/4 241/7 243/15 268/3 268/7 269/5 272/2 272/5 282/7 crashed [2] 28/10 118/8 crashes [19] 40/19 57/18 84/18 84/24 97/19 117/24 131/20 131/20 177/24 177/25 179/12 179/13 180/7 194/7 194/16 196/6 227/17 230/13 268/3 crashing [1] 252/7 create [1] 92/3 created [4] 92/22 135/4 178/2 270/2 crew [5] 50/25 51/1 54/9 130/7 226/23 crime [1] 179/9 criteria [2] 99/12 253/15 critical [2] 130/16 215/17 criticize [1] 22/6 cross [16] 11/18 11/22 17/13 85/25 86/4 90/15 90/21 109/16 109/19 123/10 149/13 149/14 231/9 231/11 240/2 286/18 cross-examination [7] 11/18 86/4 90/21 109/16 109/19 149/13 231/9 cross-examined [2] 85/25 90/15 crunched [1] 222/17 crush [16] 53/25 79/6 79/18 145/4 216/22 259/20 259/24 260/1 260/12 263/7 263/16 263/18 267/6 267/22 286/9 298/6 crushed [9] 85/17 251/17 252/1 253/1 253/6 253/7 253/10 254/1 267/14 crushing [2] 39/2 264/5 CT [11] 178/4 182/13 210/11 210/20 211/13 212/25 213/11 214/9 214/10 214/17 277/3 cue [1] 76/8 culvert [2] 190/19 190/20 curb [1] 216/13 curious [1] 129/21 current [3] 57/23 73/17 74/2 currently [6] 81/17 95/2 178/12 182/18 245/3 295/24 curtain [6] 122/24 139/18 140/17 140/18 142/7 175/3 cushioning [1] 143/11 customer [1] 121/16 customers [3] 121/15 121/20 250/22 cut [2] 203/11 267/19 cutoffs [1] 59/6 cuts [1] 267/17 CV [2] 1/4 264/12 CVR [2] 2/14 312/18 CVs [3] 116/19 163/6 163/7
D	D-Ring [2] 154/18 155/14 D.C [1] 84/7 D186 [1] 100/18 D31 [1] 191/19		

<p><b>D</b> Case 4:23-cv-00088-CDL Document 383 Filed 03/21/25 Page 325 of 362</p> <p>daily [1] 180/9  damage [13] 5/16 15/24 16/9 18/12 25/24 26/1 34/7 34/21 34/23 40/17 40/20 79/4 79/8  damaged [1] 16/3  damages [8] 6/23 298/11 299/4 307/6 307/8 310/18 310/21 310/22  DAN [1] 1/15  dangerous [4] 147/25 148/12 239/15 309/7  DANIEL [1] 1/15  darn [1] 301/24  dash [5] 17/24 140/15 188/7 252/23 252/24  data [12] 88/10 124/5 126/11 138/24 139/5 140/6 147/11 147/18 171/3 178/9 213/23 215/6  database [1] 177/14  databases [4] 177/21 177/23 177/25 178/1  date [7] 42/5 45/23 48/17 49/5 50/13 51/10 287/11  Dated [1] 312/13  dates [1] 276/18  day [14] 82/15 82/18 143/24 180/3 180/4 181/19 203/3 212/8 219/17 256/3 278/19 286/15 288/11 312/13  days [5] 87/22 177/11 286/10 286/15 293/8  dead [5] 154/5 217/5 253/24 254/18 277/23  deal [3] 129/5 266/23 301/8  dealer [1] 36/17  dealership [1] 125/13  dealerships [1] 121/15  dealing [2] 5/5 54/9  death [30] 169/23 170/10 179/14 179/19 179/22 179/22 186/25 215/1 221/1 229/13 229/16 229/20 237/3 240/20 242/7 267/1 267/2 293/15 293/25 294/16 294/17 295/14 297/21 297/22 297/25 298/15 301/10 301/11 301/12 302/9  deaths [1] 170/5  Debra [8] 18/4 150/10 284/18 284/22 285/24 293/13 295/25 296/15  Decatur [3] 252/20 285/18 285/23  deceased [2] 40/22 40/23  decedents [1] 306/23  December [1] 106/15  decide [4] 121/17 167/21 181/6 185/18  decided [5] 124/22 246/13 289/8 290/24 309/6  decides [2] 186/9 229/8  deciding [3] 14/10 304/2 304/18  decimal [2] 106/8 108/17  decision [4] 181/25 292/1 308/21 309/17  decisions [2] 186/20 211/6  deem [1] 109/14  deeper [1] 219/8  defect [8] 123/11 127/13 250/12 250/21 304/2 304/5 304/19 308/15  defective [5] 13/3 97/15 234/17 250/8 304/22  defend [1] 246/15  defendant [19] 1/6 1/22 9/23 12/23 109/23 110/5 165/23 166/2 168/2 232/8 233/1 248/3 279/16 284/4 284/7</p>	<p>291/9 304/7 309/5 309/6  Defendants [5] 4/9 21/19 45/16 191/22 203/23  Defendants [1] 166/16  defense [60] 4/17 4/22 6/16 6/19 8/10 8/22 9/12 9/14 10/2 33/4 53/16 61/10 89/18 89/24 90/12 91/7 92/16 95/4 106/6 106/8 106/9 107/20 108/15 108/17 116/12 128/15 129/9 130/23 132/24 135/15 137/11 139/1 140/2 141/22 145/18 147/7 165/19 167/8 190/11 192/11 198/22 202/3 202/19 206/1 206/15 254/23 257/1 259/17 262/5 262/8 262/15 274/17 286/23 291/25 293/7 295/23 296/3 297/6 303/18 304/12  defenses [5] 8/21 8/23 9/6 9/17 295/17  defer [2] 137/15 280/22  deferred [1] 289/25  define [2] 121/22 248/18  defined [2] 213/25 266/10  definitely [6] 125/20 143/20 146/13 146/15 148/15 155/6  definition [10] 27/17 87/19 254/6 266/10 267/5 308/1 308/3 308/5 308/12 310/1  deflate [1] 194/1  deflated [1] 175/11  deflates [1] 175/12  deform [1] 260/14  deformation [13] 5/3 19/1 19/1 40/24 78/19 79/1 79/4 91/15 92/13 198/21 200/7 251/20 264/1  deformed [9] 19/3 22/17 26/1 40/23 91/24 199/10 200/8 253/4 267/20  degree [22] 96/24 96/24 111/24 112/1 112/6 134/5 154/18 154/20 170/1 177/2 187/5 198/5 220/25 224/5 224/12 229/11 230/1 246/10 246/13 247/6 247/7 298/12  degrees [4] 192/14 192/17 192/18 266/3  DeKalb [8] 232/16 232/21 232/24 233/6 233/15 233/22 234/14 235/10  delayed [1] 306/9  delaying [1] 300/15  delete [1] 48/4  deleted [1] 309/20  deliberate [2] 101/24 288/18  deliberations [3] 167/20 288/7 289/7  Delta [7] 268/18 268/22 269/7 270/22 271/17 273/12 281/10  Delta-V [7] 268/18 268/22 269/7 270/22 271/17 273/12 281/10  demonstrate [2] 100/1 137/14  denial [2] 9/20 291/17  denied [2] 289/24 290/25  deny [1] 166/23  department [15] 112/22 161/11 161/12 161/14 162/13 176/12 176/13 180/17 180/18 182/12 186/6 219/9 235/18 237/9 270/3  department's [1] 180/3  depending [3] 152/9 188/16 230/15  depends [19] 21/10 28/9 29/16 31/2 32/4 38/15 58/5 58/11 58/13 58/14 58/17 59/13 59/17 77/16 99/9 100/11 100/16 100/25 310/19  depicted [2] 33/15 200/16  depicts [1] 91/18</p>	<p>deploy [5] 141/6 141/25 175/8 194/1 195/2  deployed [11] 139/18 139/18 139/19 139/21 140/7 140/9 140/11 142/3 142/5 142/19 175/6  deploying [1] 141/5  deployment [1] 155/25  depo [2] 216/4 275/11  depos [1] 249/6  deposition [45] 24/5 24/18 42/14 114/12 114/15 127/7 152/11 158/1 201/19 201/20 201/23 236/24 238/2 238/14 238/17 238/25 239/5 239/11 239/13 239/14 239/16 239/18 239/19 239/20 239/22 239/25 258/25 259/7 260/2 260/8 264/3 264/9 267/7 267/10 267/10 274/9 274/13 275/9 275/13 276/13 278/12 283/6 283/8 283/10 292/16  depositions [8] 23/22 114/13 114/16 151/11 158/8 188/9 248/18 248/20  describe [10] 26/15 91/18 175/6 175/7 213/21 219/20 223/16 269/20 273/25 293/7  described [10] 66/1 103/16 129/19 130/24 136/23 195/9 205/14 205/23 212/9 252/12  describes [1] 224/2  describing [5] 132/15 176/5 205/2 205/3 269/11  description [5] 47/4 48/4 49/9 81/18 195/15  design [51] 43/2 44/3 44/4 44/15 45/22 46/10 79/6 83/1 88/2 111/5 112/5 112/8 112/10 112/13 113/11 116/1 118/15 118/25 120/4 120/4 120/9 120/10 120/12 120/15 120/16 120/20 121/3 122/17 122/21 123/11 123/12 123/21 125/9 127/13 128/7 128/11 131/21 157/13 157/17 159/11 161/3 161/4 161/5 161/6 161/16 161/24 162/2 162/14 304/19 304/22 308/15  designate [1] 184/21  designed [8] 43/24 45/6 76/16 122/18 134/25 144/1 148/18 234/18  designer [1] 245/4  designing [2] 120/17 122/22  designs [5] 58/25 83/3 120/18 157/10 174/19  despite [1] 236/5  detail [10] 47/24 48/1 48/22 49/17 50/19 121/2 134/18 135/11 152/14 210/22  details [3] 36/7 157/3 157/17  detect [2] 242/25 243/12  detected [1] 243/15  determination [2] 154/21 304/21  determine [5] 46/24 182/9 184/24 190/9 242/10  determined [2] 121/25 266/25  determines [1] 75/18  determining [3] 183/21 222/20 304/4  Detroit [3] 111/3 175/24 246/3  develop [3] 81/9 192/8 230/18  developed [2] 68/7 193/22  developing [3] 24/25 47/6 60/4  development [1] 118/11  device [8] 140/24 141/2 141/6 143/6 145/21 146/7 243/14 243/16  devices [3] 140/9 141/25 142/4</p>
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-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p><b>D</b> Case 4:23-cv-00088-CDL</p> <p>devises [1] 141/3</p> <p>di [1] 281/9</p> <p>diabetes [2] 220/10 220/16</p> <p>diabetic [1] 217/14</p> <p>diagnose [1] 182/6</p> <p>diagnosis [2] 221/15 267/3</p> <p>diagonal [1] 153/10</p> <p>diagram [1] 191/14</p> <p>did [243] 7/19 7/22 7/24 15/15 21/22 22/2 24/18 24/25 27/9 42/2 42/8 42/11 45/14 46/25 47/13 47/13 49/5 51/19 52/16 54/23 55/14 60/16 61/5 61/8 61/17 61/21 64/16 65/19 65/22 68/8 68/18 68/19 68/25 78/15 80/14 82/4 82/12 82/14 84/14 84/23 85/2 85/6 85/11 88/13 91/2 91/11 92/10 92/11 93/6 93/7 94/23 97/5 97/7 105/6 105/8 111/13 111/15 111/17 111/23 113/21 113/25 114/12 114/13 127/2 128/25 129/10 129/11 135/8 137/8 138/21 138/23 138/24 138/25 139/16 141/25 143/18 144/20 144/22 145/8 145/9 149/21 149/25 152/10 163/12 164/19 165/12 165/13 165/21 169/19 170/5 171/10 172/9 172/25 173/2 173/6 173/14 173/14 173/16 173/23 175/21 175/22 175/25 176/7 176/9 176/11 176/14 176/21 177/4 188/3 188/4 188/5 188/11 188/12 188/14 188/15 188/18 188/21 188/21 192/4 198/15 198/15 198/18 198/19 199/3 199/20 199/21 200/3 200/12 200/12 201/13 201/17 201/20 201/22 201/24 202/16 202/18 202/25 203/16 207/5 207/8 207/9 207/24 208/13 209/10 209/11 211/9 211/25 212/3 212/4 212/6 212/18 214/5 214/25 215/2 215/3 215/5 215/7 217/9 217/22 220/24 221/9 221/11 224/4 224/7 224/9 224/12 225/3 226/10 227/24 229/10 229/19 229/21 229/24 230/1 230/4 231/5 231/7 232/18 236/2 236/11 236/22 236/25 237/25 238/4 238/19 238/20 239/24 240/2 240/13 240/17 241/8 241/10 241/11 242/9 242/20 244/20 244/25 245/17 245/20 245/23 251/9 251/11 252/12 256/18 257/7 258/3 258/25 259/18 259/20 259/23 260/2 260/3 260/9 261/7 261/8 263/16 263/18 263/23 264/6 265/8 265/9 265/10 265/13 266/23 276/23 276/25 280/4 280/6 281/12 282/8 283/3 283/10 283/11 284/18 286/9 291/2 293/25 302/1 302/3 302/5 305/21 308/3 308/4</p> <p>didn't [73] 6/1 15/13 18/11 22/6 28/17 30/17 46/23 52/3 52/14 52/17 56/21 57/11 61/16 65/4 76/20 80/2 104/11 107/6 116/16 136/25 149/24 150/1 156/5 157/13 157/15 170/25 171/12 178/1 197/14 201/6 205/7 211/1 214/14 222/9 223/3 223/23 229/23 235/4 235/7 236/19 238/23 241/2 241/14 243/4 243/6 243/18 245/24 251/5 253/3 253/15 254/21 258/18 261/5 263/11 264/9 265/8 265/12 265/14 267/22 274/10 276/2 276/9 298/19 301/17 302/4 303/4 303/12 303/16 304/10 304/10 304/15 305/1</p>	<p>306/18</p> <p>die [6] 170/25 218/22 227/24 241/16 241/17 302/10</p> <p>died [21] 43/24 44/9 51/1 171/6 179/15 220/21 221/8 223/25 224/6 227/25 229/7 238/12 238/19 240/1 241/23 253/12 254/8 282/6 282/6 286/11 299/18</p> <p>dies [1] 240/20</p> <p>diesel [1] 122/2</p> <p>diet [1] 220/19</p> <p>dietary [1] 289/4</p> <p>differ [1] 103/16</p> <p>difference [11] 44/2 55/20 63/22 92/3 104/1 104/8 135/12 136/4 154/13 155/10 308/25</p> <p>different [40] 9/6 21/11 22/5 45/5 46/5 47/9 50/8 54/25 57/5 59/24 70/18 71/5 73/24 74/12 75/15 78/12 104/21 115/7 121/6 121/6 122/3 122/3 135/9 148/24 157/10 157/18 173/8 174/11 174/19 179/6 182/11 184/3 184/18 237/11 237/15 255/15 294/1 295/15 297/22 308/1</p> <p>differently [2] 43/15 138/17</p> <p>difficult [3] 261/20 261/21 266/10</p> <p>difficulty [1] 254/11</p> <p>dig [1] 219/8</p> <p>dimensional [4] 263/4 263/4 280/13 280/17</p> <p>dimensionally [1] 94/5</p> <p>dinner [2] 300/15 306/9</p> <p>direct [14] 109/17 109/20 109/22 110/22 156/24 168/23 241/8 247/10 247/17 262/17 264/11 268/5 271/15 284/16</p> <p>direction [4] 31/12 94/10 112/24 193/12</p> <p>directionality [1] 153/16</p> <p>directive [2] 53/6 93/17</p> <p>directly [3] 7/4 35/24 160/14</p> <p>director [2] 178/14 178/17</p> <p>disagree [1] 43/6</p> <p>disagreed [1] 83/21</p> <p>disciplines [1] 173/8</p> <p>disclose [1] 279/12</p> <p>disclosed [4] 127/6 148/2 148/7 259/1</p> <p>discoloration [1] 223/18</p> <p>discovered [1] 106/2</p> <p>discovery [2] 107/1 166/8</p> <p>discuss [10] 105/20 115/11 162/25 163/1 169/22 195/10 255/7 289/7 289/10 289/11</p> <p>discussed [8] 60/20 60/23 61/6 135/16 139/24 164/10 307/12 308/8</p> <p>discussions [2] 211/9 288/7</p> <p>disease [8] 218/11 220/7 239/17 240/7 240/8 240/24 241/21 241/25</p> <p>dishonesty [2] 308/24 309/25</p> <p>dismiss [1] 4/14</p> <p>disparage [1] 82/22</p> <p>displace [2] 29/9 30/16</p> <p>displaced [2] 30/18 35/2</p> <p>displacement [2] 23/19 31/16</p> <p>displaces [2] 30/13 34/19</p> <p>display [2] 133/1 135/18</p> <p>displayed [1] 5/2</p> <p>dispute [7] 33/23 102/13 103/25 104/2 104/10 151/3 233/21</p> <p>disputes [1] 290/22</p>	<p>disputing [6] 21/23 34/16 78/9 78/11 103/1 103/8</p> <p>dissipate [2] 195/3 195/5</p> <p>dissipated [1] 195/2</p> <p>distance [6] 30/22 30/24 31/22 31/23 97/4 262/20</p> <p>distinctive [1] 154/5</p> <p>distinguishing [1] 107/9</p> <p>distraction [1] 196/11</p> <p>distributed [2] 66/13 66/14</p> <p>DISTRICT [7] 1/1 1/1 1/10 4/4 4/4 312/4 312/5</p> <p>divide [6] 56/7 56/11 63/8 70/20 71/15 74/24</p> <p>divided [4] 62/7 64/5 71/11 74/16</p> <p>dividing [1] 75/7</p> <p>DIVISION [2] 1/2 4/5</p> <p>DMV [4] 186/4 186/5 237/6 237/18</p> <p>do [323]</p> <p>docket [1] 98/10</p> <p>docs [1] 184/11</p> <p>doctor [13] 169/13 171/25 172/15 178/20 211/25 220/18 243/21 265/20 265/21 277/15 278/6 279/16 282/23</p> <p>doctors [5] 177/9 236/14 265/24 277/19 278/4</p> <p>document [37] 45/12 45/18 47/25 48/18 52/9 53/2 53/15 53/23 69/7 71/19 72/2 72/8 72/12 72/13 72/18 72/23 72/25 73/1 73/8 73/9 73/24 74/2 74/5 81/4 126/9 128/22 132/3 158/21 166/21 257/2 269/11 269/16 269/19 272/22 272/24 273/15 307/16</p> <p>documentation [1] 55/22</p> <p>documented [1] 198/1</p> <p>documents [4] 53/4 53/5 53/11 178/7</p> <p>Dodge [5] 76/25 77/11 86/7 86/10 87/5</p> <p>does [80] 4/17 6/7 7/2 29/13 30/4 30/19 31/3 33/22 38/8 40/24 47/9 62/2 62/22 66/9 67/16 78/3 84/5 86/10 86/11 87/8 87/10 87/14 87/15 87/19 87/20 89/11 92/13 95/20 95/22 100/15 115/23 120/10 128/1 128/3 128/4 129/3 129/5 131/17 141/7 143/13 146/23 147/9 147/16 148/17 155/16 159/16 167/14 172/15 173/19 174/7 179/24 184/19 186/9 193/5 196/20 197/7 197/17 197/18 200/11 203/8 203/23 206/9 220/22 226/6 226/21 227/15 245/5 247/7 257/22 269/20 269/22 283/22 289/17 293/9 293/13 295/16 305/25 307/3 308/19 310/19</p> <p>doesn't [43] 5/19 6/2 15/22 27/8 27/11 29/9 30/10 51/14 56/17 56/20 79/18 91/20 95/2 100/1 103/4 116/22 122/17 186/14 194/18 196/20 196/24 198/10 220/5 221/23 223/14 227/10 227/11 227/11 228/18 235/11 251/6 253/16 259/15 262/3 270/4 270/9 277/12 295/13 295/13 298/20 310/17 310/18 311/5</p> <p>dog [2] 26/6 26/10</p> <p>doing [16] 14/12 75/20 83/16 96/16 114/1 115/16 117/2 155/19 160/19 174/21 177/22 202/23 204/4 237/13 246/15 280/25</p> <p>dollar [4] 13/12 13/16 310/23 311/2</p> <p>dollars [3] 13/8 160/12 310/22</p> <p>Dolly [1] 101/21</p> <p>don't [251] 4/13 4/21 5/21 7/8 8/3 8/18</p>
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--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------



<p>Case 4:23-cv-00088-CDL Document 383 Filed 03/21/25 Page 377 of 392</p> <p>don't... [245] 10/15 13/14 13/17 14/1 14/16 14/24 14/25 15/1 18/1 18/8 21/12 22/4 23/1 23/3 23/8 23/14 24/3 24/4 24/15 24/19 24/24 25/2 25/7 25/14 26/8 26/11 26/12 27/4 35/5 36/23 37/6 39/5 40/17 41/12 42/4 42/7 42/13 42/19 43/19 44/5 45/1 46/15 46/18 47/25 49/3 51/18 53/1 53/16 54/17 55/12 55/16 55/18 55/25 56/14 57/9 57/20 59/5 59/7 60/14 60/23 61/6 61/22 62/4 62/5 62/12 69/7 69/14 69/19 70/11 70/25 71/19 72/6 72/9 72/18 72/24 73/4 73/19 74/5 74/6 74/9 74/11 75/1 75/10 77/20 77/22 78/14 79/14 80/5 80/22 81/6 81/15 82/7 82/22 83/19 85/5 85/10 85/17 87/1 91/24 99/3 99/22 100/7 100/18 102/7 104/9 104/19 104/20 106/21 108/6 109/2 109/25 114/9 114/11 121/2 123/6 123/6 125/23 128/19 135/6 138/14 139/3 140/3 143/12 143/23 146/14 146/19 148/1 149/17 149/20 149/23 150/23 151/13 151/23 152/12 157/3 157/17 158/19 158/21 160/16 163/1 164/18 166/23 183/11 193/1 194/4 198/1 206/16 214/9 214/17 218/18 225/22 226/10 226/24 228/7 228/11 229/1 229/18 230/18 230/19 230/25 230/25 232/9 232/11 232/14 232/14 232/23 233/8 235/21 236/14 237/5 237/6 237/9 240/3 241/13 242/4 244/7 248/5 248/6 249/24 250/2 250/5 251/6 252/22 252/24 254/12 254/14 256/8 258/8 258/10 260/1 261/21 261/21 266/3 266/3 266/4 266/8 266/9 268/4 268/7 269/2 269/13 273/3 275/15 276/9 276/10 276/11 277/14 278/17 279/4 280/2 280/12 280/16 280/21 282/22 285/4 288/19 288/22 289/10 289/11 290/16 292/12 292/17 292/21 292/24 293/15 294/6 294/22 294/24 296/17 297/14 298/7 298/8 298/15 299/8 299/11 301/7 301/12 302/18 305/4 305/6 306/13 306/18 309/10 310/3 310/4</p> <p>done [46] 10/5 10/6 22/7 42/6 43/15 54/6 55/1 55/15 63/25 73/23 81/4 98/15 105/11 118/6 118/23 121/12 121/14 121/21 121/24 124/21 136/2 140/13 181/5 185/12 185/20 186/19 187/24 201/21 202/5 219/7 219/11 233/18 239/16 248/18 249/6 258/5 258/19 258/21 258/24 259/1 275/18 277/3 277/3 277/4 296/18 300/23</p> <p>door [18] 19/14 19/17 19/18 19/21 19/25 20/5 20/9 20/11 20/14 20/15 20/23 21/3 112/15 199/7 215/23 215/23 252/13 252/17</p> <p>doors [2] 20/12 140/19</p> <p>Dorel [10] 233/11 233/23 233/25 234/3 234/6 234/13 234/18 235/15 236/7 249/14</p> <p>DOT [1] 275/7</p> <p>double [2] 38/18 109/16</p> <p>doubled [1] 205/14</p> <p>down [129] 10/20 18/20 18/22 19/7 19/10 19/17 23/21 25/13 25/20 27/10 29/11 29/17 35/6 35/7 35/13 35/16 35/23 38/13 38/22 39/3 48/3 49/9 49/9</p>	<p>49/20 50/22 52/9 58/2 58/9 65/12 67/12 67/16 67/22 68/14 69/1 70/1 74/13 79/6 89/17 90/24 92/1 94/11 100/9 101/9 101/18 103/23 104/25 110/3 113/8 120/23 128/9 129/7 130/22 131/13 132/1 140/19 141/14 143/14 145/12 152/17 159/6 164/4 164/23 181/22 182/2 183/6 184/13 190/17 190/23 190/25 194/18 194/23 195/7 199/8 202/16 203/14 205/5 205/12 207/2 207/2 208/4 208/6 208/8 209/21 210/3 210/4 210/5 213/22 221/20 222/23 223/19 223/20 223/24 223/24 226/14 227/9 227/9 227/16 228/20 232/6 236/6 236/8 236/12 236/16 236/19 236/21 241/17 243/13 245/11 252/6 252/7 252/8 252/9 253/9 253/10 253/19 254/25 255/12 260/16 263/25 264/5 264/9 266/2 267/3 267/14 267/19 281/18 285/18 285/22 290/20</p> <p>downgauges [1] 88/24</p> <p>Downs [10] 265/19 265/20 275/24 276/2 276/11 277/9 277/10 278/10 291/21 292/16</p> <p>Downs' [1] 276/13</p> <p>downward [2] 30/12 34/14</p> <p>downwards [1] 34/6</p> <p>Dr [69] 11/24 21/21 41/3 72/14 85/25 87/22 89/4 89/11 93/3 93/21 95/5 98/7 98/9 98/23 106/10 168/3 168/5 171/23 174/20 178/10 186/1 187/4 191/20 195/12 195/14 198/23 201/2 204/20 206/7 206/21 209/15 212/1 212/22 212/23 217/25 219/5 220/24 221/12 221/14 222/20 229/10 230/9 236/22 237/1 238/20 239/10 239/24 244/9 255/24 257/2 262/8 262/14 266/14 267/9 268/15 274/20 274/24 275/18 276/2 276/11 276/13 276/18 277/9 277/10 283/3 283/8 287/15 291/21 292/16</p> <p>Dr. [76] 39/17 45/18 61/9 70/12 70/15 88/7 88/19 90/15 91/1 92/2 95/13 97/8 137/7 137/8 137/24 138/1 168/25 176/5 186/22 190/12 193/17 194/10 197/24 200/1 202/4 204/22 207/19 209/10 210/8 210/19 210/21 210/22 211/4 211/8 211/9 211/16 211/17 211/22 212/9 212/16 212/18 212/20 218/23 218/25 221/8 224/3 225/8 226/2 231/13 236/9 236/13 236/17 237/12 238/1 238/2 238/5 238/25 239/11 243/3 244/3 257/1 265/19 269/15 270/16 275/24 278/8 278/10 278/10 278/11 278/25 279/21 279/24 280/22 283/5 283/10 287/3</p> <p>Dr. Camacho [17] 137/7 137/8 137/24 176/5 197/24 207/19 210/21 211/8 211/9 211/16 211/17 211/22 212/9 212/18 212/20 225/8 278/11</p> <p>Dr. Camacho's [3] 138/1 209/10 210/8</p> <p>Dr. Cochran [1] 236/13</p> <p>Dr. Downs [3] 265/19 275/24 278/10</p> <p>Dr. Eisenstat [1] 221/8</p> <p>Dr. Ellis [11] 218/25 236/9 237/12 238/1 238/2 238/5 243/3 244/3 279/21 279/24 283/5</p> <p>Dr. Ellis' [1] 238/25</p> <p>Dr. Ellis's [2] 239/11 283/10</p>	<p>Dr. Mahmood [2] 70/12 70/15</p> <p>Dr. Raphael [2] 278/8 278/10</p> <p>Dr. Reardon [1] 236/17</p> <p>Dr. Sochor [20] 168/25 186/22 190/12 193/17 194/10 200/1 202/4 204/22 210/19 210/22 211/4 212/16 218/23 224/3 226/2 231/13 257/1 269/15 270/16 278/25</p> <p>Dr. Sochor's [1] 287/3</p> <p>Dr. Vogler [11] 39/17 45/18 61/9 88/7 88/19 90/15 91/1 92/2 95/13 97/8 280/22</p> <p>Draco [1] 249/10</p> <p>draft [1] 164/24</p> <p>DRAMMEH [4] 2/14 2/15 312/3 312/18</p> <p>draw [11] 19/19 19/19 19/20 21/8 31/3 32/11 260/25 261/8 261/17 261/20 262/17</p> <p>drawing [3] 28/21 134/12 280/17</p> <p>drawn [2] 35/11 90/16</p> <p>DRE [16] 11/4 12/5 12/8 12/12 13/11 13/20 14/8 14/13 111/8 111/13 158/15 158/15 158/17 160/4 160/14 160/19</p> <p>drill [1] 132/1</p> <p>drive [11] 106/12 106/20 107/2 107/8 108/1 108/7 122/2 130/8 237/21 237/21 237/24</p> <p>driven [1] 67/12</p> <p>driver [25] 16/4 16/12 17/7 17/17 18/14 24/21 26/21 28/1 28/24 30/6 30/20 31/14 32/18 34/12 35/17 35/24 41/16 41/23 67/23 95/25 102/3 145/14 145/16 148/17 253/5</p> <p>driver's [4] 16/10 102/4 140/15 186/9</p> <p>driver-side [6] 24/21 26/21 31/14 34/12 35/17 41/16</p> <p>drivers [2] 36/10 186/20</p> <p>drives [2] 40/10 171/5</p> <p>driveway [1] 190/19</p> <p>driving [2] 298/9 299/1</p> <p>drop [11] 63/1 63/13 63/17 81/3 83/13 83/14 91/16 96/16 96/19 102/21 194/24</p> <p>dropped [5] 82/5 91/23 96/25 97/1 97/3</p> <p>drops [2] 82/4 241/17</p> <p>drove [2] 296/19 298/15</p> <p>drug [1] 181/21</p> <p>due [2] 234/17 276/21</p> <p>duly [3] 110/20 168/21 284/14</p> <p>dummies [7] 79/16 79/20 80/9 81/3 81/13 97/6 272/2</p> <p>dummy [5] 39/21 79/11 79/22 131/11 272/3</p> <p>dummy's [2] 79/13 102/1</p> <p>duplicating [1] 109/15</p> <p>during [48] 18/12 22/3 42/11 58/15 58/16 79/2 83/13 84/8 90/21 92/12 100/13 102/10 102/20 103/1 106/3 114/23 127/9 131/21 139/16 140/7 165/25 167/20 176/24 177/4 209/15 241/8 245/14 247/10 247/17 254/24 262/9 262/10 262/11 264/3 264/11 267/10 268/5 268/13 268/14 271/14 275/13 275/24 276/2 286/9 287/17 289/7 289/13 290/5</p> <p>duty [17] 37/8 37/9 38/3 43/23 46/1 46/2 53/7 57/25 69/23 70/2 72/5 76/18 76/19 87/5 89/12 268/3 268/25</p> <p>DX [1] 209/13</p> <p>dynamic [5] 59/17 59/20 59/23 63/5</p>
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<p><b>D</b> Case 4:23-cv-00088-CDL  dynamic... [1] 63/6  dynamically [1] 59/18  dysrhythmia [10] 218/20 219/19 221/2  237/22 241/24 242/3 242/7 242/11  242/24 242/25  dysrhythmias [3] 181/24 240/18 243/6</p> <hr/> <p><b>E</b>  e-mailed [1] 286/25  each [8] 32/14 65/9 97/3 115/7 115/11  149/18 228/5 239/16  EADY [7] 2/6 289/20 302/16 302/22  306/13 309/9 309/15  earlier [16] 24/7 26/13 62/10 69/25  130/15 166/4 231/5 249/20 267/4  268/12 270/16 273/10 273/23 277/21  289/25 291/1  early [4] 42/7 141/4 183/24 287/25  earned [2] 306/23 307/6  ears [1] 179/8  easily [3] 39/2 59/12 253/4  Easter [1] 110/2  easy [1] 53/24  eat [1] 288/20  eats [1] 78/1  ebbs [1] 159/25  ECF [2] 106/5 108/14  echos [1] 219/11  ed [1] 301/18  edge [1] 196/14  edited [1] 92/23  editor [2] 266/21 266/23  EDR [8] 138/4 138/7 139/2 139/5  139/15 140/6 140/10 171/3  educate [2] 189/12 189/14  education [3] 69/19 172/3 172/4  EDWARD [1] 1/23  effect [6] 51/20 52/7 89/4 89/7 194/7  291/24  effectively [1] 96/9  effects [1] 73/23  eight [3] 63/24 84/7 208/5  eight-year [1] 84/7  eighth [1] 210/15  Eikey [15] 5/7 5/11 5/14 6/7 6/19 7/14  7/18 8/6 40/1 61/10 61/14 61/19 79/16  82/21 162/10  Eikey's [1] 5/24  Eisenstat [10] 41/3 217/25 221/8  221/12 221/14 223/14 242/14 254/7  266/14 276/18  either [19] 10/3 11/3 30/7 30/25 53/14  63/13 68/1 80/7 104/19 107/25 136/24  137/4 158/1 166/22 177/12 200/17  207/10 229/19 293/14  ejected [1] 85/3  ejection [1] 85/13  EKG [1] 181/5  EKGs [5] 180/19 180/25 181/2 181/3  182/22  elastic [1] 142/15  elderly [2] 180/4 226/13  electrical [18] 182/24 183/5 183/9  183/13 183/14 183/16 218/4 218/6  218/13 218/16 218/17 220/15 240/6  240/9 240/25 241/2 242/15 243/7  electronic [4] 139/16 160/18 215/6  263/1  electronically [1] 160/15</p>	<p>electrophysiologist [2] 183/15 219/9  element [5] 46/23 47/1 47/7 54/5 54/4  elements [2] 103/20 197/11  elevation [3] 180/21 180/23 235/23  eliminated [1] 149/10  ELIZABETH [5] 1/25 247/2 247/12  256/1 256/19  ELIZABETH.WRIGHT [1] 2/1  Ellis [16] 218/25 236/9 236/22 237/1  237/12 238/1 238/2 238/5 238/20  239/25 243/3 244/3 279/21 279/24  283/3 283/5  Ellis' [1] 238/25  Ellis's [3] 239/11 283/8 283/10  else [31] 15/17 56/2 58/4 58/8 64/1  105/15 129/1 153/17 162/25 165/15  183/7 201/12 207/9 215/10 217/4  221/14 221/22 223/13 229/7 236/8  280/7 282/10 287/20 291/4 297/15  301/1 301/2 301/4 302/15 306/11  306/14  embalmed [1] 223/12  embolism [1] 242/1  emergency [27] 141/3 145/25 169/5  175/24 175/25 176/1 176/3 176/13  178/14 178/20 179/24 180/3 180/13  180/17 180/18 182/12 184/11 185/6  185/8 186/8 186/23 219/8 230/10  235/18 237/8 264/19 264/24  emphasis [2] 172/7 246/10  emphasized [1] 165/11  emphysema [1] 217/17  employed [1] 96/15  employee [2] 114/23 119/2  employment [2] 160/25 173/7  EMS [4] 178/19 178/25 186/24 226/23  encounter [2] 91/11 148/14  encountered [1] 149/18  end [26] 10/8 10/14 82/15 82/18 86/4  96/21 129/10 129/14 161/25 190/21  191/10 191/10 191/12 191/12 191/17  191/18 196/9 196/21 217/24 222/8  225/20 268/3 269/5 288/11 308/22  311/13  endeavor [1] 105/3  ended [1] 84/4  ends [2] 65/24 216/1  energy [23] 65/12 65/15 65/16 65/17  66/1 66/2 66/6 68/24 104/22 129/17  130/12 133/15 144/23 145/1 191/1  194/21 194/23 194/24 194/25 195/2  195/4 195/5 195/6  enforced [1] 109/12  engage [3] 68/16 68/18 166/8  engaged [2] 68/23 309/5  engagement [4] 65/22 94/11 94/14  94/15  engages [4] 58/5 59/13 65/17 100/12  engaging [4] 58/12 58/14 65/16 67/13  engineer [30] 25/25 28/20 40/18 41/1  41/14 47/24 48/25 49/18 50/19 55/23  69/18 69/20 79/21 80/7 89/6 102/7  102/8 113/11 114/7 136/11 142/16  142/25 146/18 150/3 150/3 158/12  172/1 172/6 172/13 172/15  engineered [2] 142/14 142/17  engineering [56] 47/2 47/3 51/22 51/24  52/10 53/1 54/24 64/20 69/9 78/12  111/5 111/9 111/9 111/25 112/2 113/5  114/6 118/24 122/9 122/9 122/10</p>	<p>122/12 159/12 161/4 161/5 161/6  162/8 162/14 169/7 169/9 169/12  170/1 172/4 172/5 172/11 172/21  173/6 176/10 177/8 178/16 178/21  187/5 189/7 189/12 190/16 220/25  224/5 224/13 229/11 230/2 245/21  246/10 247/4 266/3 278/2 278/6  engineers [19] 52/14 52/24 53/6 73/16  83/1 83/2 114/9 119/7 120/10 120/13  121/12 123/19 129/2 131/9 159/25  162/4 173/5 177/9 185/15  engines [1] 122/2  Enhanced [4] 52/17 69/22 72/4 73/17  enjoy [1] 163/2  enlarged [8] 217/25 218/1 218/1  219/23 219/24 280/4 280/8 280/9  enough [27] 21/2 24/17 26/13 33/25  36/24 42/2 42/21 46/11 47/4 62/10  62/24 66/20 71/8 71/17 80/6 82/14  133/18 134/23 136/4 142/3 149/21  166/23 176/20 177/20 185/4 188/24  196/14  entering [1] 133/13  ENTERS [3] 11/16 110/4 255/18  entire [17] 8/24 30/12 65/16 67/13  98/11 113/5 115/16 122/21 174/15  183/23 243/3 250/9 250/13 250/19  250/20 250/24 251/1  entirely [3] 45/5 155/5 305/18  entirety [4] 7/3 45/18 290/5 291/1  entitled [3] 54/1 213/7 312/8  entity [2] 57/15 166/10  entrapped [1] 263/20  entry [3] 14/19 69/9 69/14  environment [1] 205/12  epiphany [1] 307/13  equal [7] 56/2 58/4 58/8 64/1 75/23  100/9 292/11  equally [3] 65/5 66/2 66/10  equals [2] 71/9 75/4  equipment [2] 12/10 14/11  equivalent [4] 37/16 37/20 37/22 37/24  ER [7] 181/17 211/4 211/6 211/7  265/21 265/24 277/15  erect [2] 30/19 31/14  err [2] 202/24 202/25  error [5] 165/9 204/18 274/10 274/12  292/25  errors [1] 22/2  ERSP [2] 43/23 44/9  especially [3] 118/24 205/15 226/20  essential [1] 292/6  essentially [5] 6/18 34/23 42/24 51/7  88/2  establish [5] 20/25 21/11 72/16 92/25  116/19  established [5] 12/4 12/8 12/15 12/24  72/10  estate [1] 282/25  estimate [6] 74/3 114/19 117/9 159/21  261/14 261/23  et [2] 1/4 131/16  evaluate [6] 75/21 174/5 182/9 187/18  199/22 221/9  evaluated [4] 57/24 96/12 104/18  201/25  evaluating [3] 198/12 207/6 309/4  evaluation [2] 87/14 207/15  EVAN [1] 1/15  even [45] 5/19 8/2 23/16 23/17 24/21</p>
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E Case 4:23-cv-00088-CDL	Examinations [3] 109/13 109/22 110/1 Document 883 Filed 03/21/25 Page 329 of 362	Exhibit 472 [1] 135/15 Exhibit 519 [1] 190/11
<p>even... [40] 41/23 43/5 43/14 43/22 44/7 56/7 56/11 61/1 65/19 100/24 101/3 104/23 106/14 118/4 149/2 149/5 149/24 160/1 185/3 192/21 194/6 205/6 206/24 210/3 217/25 222/2 223/12 223/24 228/17 243/4 251/6 251/6 279/24 294/24 298/8 301/7 302/18 303/12 304/2 309/6 Evenflo [1] 249/12 evening [3] 10/4 287/25 289/15 evenly [1] 68/14 event [36] 62/24 66/4 101/23 113/5 113/8 131/12 181/17 184/16 186/12 191/4 191/8 217/10 217/12 220/2 223/17 238/13 238/19 239/23 240/1 241/14 241/19 243/1 251/9 276/4 277/1 277/6 277/8 277/13 277/18 278/8 281/22 298/14 298/19 298/20 299/16 299/19 events [7] 60/3 180/14 180/15 181/9 182/7 298/13 301/11 eventually [7] 65/22 65/24 66/5 122/11 124/15 124/17 175/19 ever [28] 13/2 55/22 62/18 70/12 70/14 72/24 134/25 135/3 135/7 149/18 187/8 218/15 236/22 237/1 237/25 238/4 240/2 250/24 259/20 259/23 267/3 268/8 279/15 284/18 284/21 284/21 285/23 285/24 every [12] 65/11 65/15 97/8 122/17 131/24 143/24 153/25 177/10 220/13 228/17 286/15 292/23 everybody [6] 33/24 156/11 163/20 167/7 279/9 302/13 everyday [1] 145/23 everyone [2] 174/20 300/15 everything [30] 17/3 17/3 17/5 17/10 17/11 19/8 53/21 58/8 64/3 100/10 124/14 154/24 156/11 178/5 180/4 183/7 195/2 207/9 209/4 220/12 221/22 223/13 229/7 258/19 258/21 259/2 259/16 282/10 301/18 303/6 evidence [62] 4/11 6/13 6/17 25/6 33/6 98/17 116/13 127/8 130/25 133/1 133/16 134/2 134/4 134/6 134/12 135/8 136/11 136/13 136/15 137/8 137/10 138/11 138/14 138/15 138/19 139/4 139/5 146/13 147/19 150/15 150/25 151/13 151/23 152/4 154/13 166/1 193/7 222/21 223/2 240/7 240/12 242/12 253/6 256/6 262/6 269/24 284/5 284/7 284/8 287/2 287/7 288/4 289/9 289/19 290/5 290/7 291/20 291/23 294/10 294/13 296/18 297/12 evolve [1] 44/4 exact [5] 49/3 72/6 81/6 100/7 103/10 exactly [29] 4/18 17/23 20/24 21/1 21/13 21/14 29/14 29/21 36/23 42/19 56/23 59/7 60/18 70/25 78/15 82/8 92/9 98/22 101/11 121/19 130/20 136/22 143/2 153/19 177/21 203/3 243/16 263/14 301/23 examination [28] 11/18 11/22 85/23 86/4 90/21 99/1 102/20 106/3 109/16 109/17 109/19 109/20 110/22 149/13 149/14 168/23 231/9 231/11 241/8 247/10 247/17 254/24 264/11 268/5 271/15 278/23 282/16 284/16</p>	<p>examined [4] 82/7 85/25 88/11 90/15 examiner [8] 179/2 179/3 179/4 179/5 179/18 186/2 264/15 267/3 examiners [2] 179/9 264/14 example [15] 6/12 13/25 91/23 105/2 122/20 131/18 131/22 131/25 132/10 132/14 154/12 175/8 197/8 210/8 279/11 exceed [1] 59/12 Excellence [1] 69/9 Excellent [1] 290/14 except [4] 9/12 10/1 174/14 291/1 excerpt [1] 53/15 exchange [1] 228/4 exchanging [1] 228/6 exclude [1] 109/4 exclusion [1] 221/16 excused [3] 105/17 162/21 283/19 executed [1] 282/19 executive [1] 70/2 executives [2] 128/25 128/25 exemplar [2] 188/12 283/12 exercises [1] 220/19 exercising [1] 308/18 exhibit [99] 4/19 19/12 21/15 33/3 33/4 37/10 45/16 47/23 48/22 49/16 50/18 53/16 53/18 69/5 71/9 72/8 87/21 88/5 88/18 89/9 89/18 89/24 89/24 90/4 90/12 91/7 92/16 92/19 93/8 95/4 95/18 100/18 106/4 106/6 106/6 106/8 106/9 106/13 106/14 107/1 107/20 108/14 108/14 108/15 108/15 108/17 108/23 109/2 116/13 128/15 129/9 129/18 130/23 132/24 133/3 135/15 137/11 139/1 140/2 141/22 145/18 147/7 158/20 164/5 190/11 191/19 191/23 192/11 193/17 198/22 199/25 202/3 202/19 203/23 206/1 206/15 254/23 255/13 255/22 256/2 256/6 257/1 259/17 262/5 262/8 262/15 269/15 269/16 269/24 270/12 272/19 274/14 274/18 274/18 286/23 286/24 287/1 287/2 287/13 Exhibit 114 [2] 69/5 71/9 Exhibit 13 [1] 147/7 Exhibit 16.12 [1] 198/22 Exhibit 169 [2] 45/16 53/16 Exhibit 182 [1] 47/23 Exhibit 185 [1] 48/22 Exhibit 186 [3] 107/20 108/15 108/17 Exhibit 186.1 [1] 106/8 exhibit 186.2 [2] 87/21 89/9 Exhibit 188 [1] 49/16 Exhibit 189 [1] 50/18 Exhibit 212 [1] 116/13 Exhibit 214 [2] 132/24 133/3 Exhibit 236 [1] 72/8 Exhibit 237.1 [1] 129/18 Exhibit 3-1 [1] 191/23 Exhibit 302 [1] 33/4 Exhibit 310 [1] 274/18 Exhibit 313.32 [2] 202/19 206/1 Exhibit 313.34 [2] 286/24 287/1 Exhibit 313.35 [1] 206/15 Exhibit 313.43 [1] 259/17 Exhibit 313.44 [1] 262/5 Exhibit 359A [1] 137/11 Exhibit 47.19 [1] 141/22</p>	<p>Exhibit 537A [1] 21/15 Exhibit 551 [1] 89/18 Exhibit 551A [2] 90/12 91/7 Exhibit 552 [1] 92/16 Exhibit 582 [1] 33/3 Exhibit 583.1 [1] 37/10 Exhibit 597 [3] 269/15 269/16 269/24 Exhibit 730 [1] 255/22 Exhibit 745 [1] 158/20 Exhibit 84 [1] 19/12 exhibits [19] 61/10 93/12 93/13 106/7 106/12 106/21 106/24 107/5 107/12 107/19 107/21 107/23 108/16 108/20 109/8 255/6 255/15 255/15 255/16 exhume [1] 282/2 exist [2] 262/3 305/5 exists [1] 22/5 EXITS [1] 289/16 expand [1] 230/22 expanding [1] 84/1 expect [12] 18/19 38/12 41/17 55/20 89/6 109/7 154/5 154/9 154/25 223/12 223/13 226/19 expediency [1] 93/16 expenses [1] 12/12 experience [10] 39/20 43/8 114/10 121/7 121/20 174/7 183/20 185/10 188/18 284/25 experienced [2] 100/16 102/10 expert [43] 40/2 41/2 52/20 79/10 92/22 92/23 115/25 116/2 120/4 123/4 129/24 132/16 134/14 138/10 148/2 159/9 186/23 188/10 200/18 210/19 210/25 212/16 232/1 232/6 232/25 246/16 247/2 256/19 257/6 257/8 258/13 266/1 266/6 266/8 267/7 273/17 273/20 274/6 274/15 276/15 276/19 291/21 292/13 expertise [7] 116/4 122/19 122/20 137/16 148/6 150/17 151/24 experts [13] 115/1 115/7 115/9 115/10 137/3 170/4 170/8 188/9 189/7 189/15 189/17 246/24 278/4 explain [24] 9/6 44/20 86/12 88/6 90/20 91/16 92/13 94/3 96/18 97/5 97/10 98/2 98/9 120/20 136/25 165/23 166/5 189/24 190/14 192/9 212/18 277/25 282/5 303/15 explained [3] 44/12 97/22 184/5 explaining [3] 5/5 44/23 204/20 explains [1] 294/8 explanation [1] 168/1 Explorers [1] 250/15 Exponent [2] 153/19 153/23 expressing [1] 169/25 extension [1] 179/5 extensive [1] 264/12 extent [4] 294/4 297/11 297/18 310/4 external [1] 78/24 extra [1] 9/17 extracting [1] 224/1 extraneous [2] 92/19 164/11 extricated [3] 251/8 251/22 252/1 eye [5] 113/9 131/13 175/9 175/10 223/8 eyes [6] 35/24 179/8 220/14 223/14 227/10 286/14 eyesight [1] 216/14</p>

F	father [9] 111/21 220/21 244/22 244/25 243/6 264/24 285/2 285/11 286/7 father's [4] 285/7 285/10 285/13 286/9 fault [8] 16/7 204/10 293/7 294/18 296/8 296/9 298/12 299/23 FDA [2] 88/15 89/2 FEA [5] 47/7 61/4 92/20 94/19 94/22 feature [2] 142/13 142/18 features [5] 146/20 147/4 149/5 149/8 174/23 FEBRUARY [8] 1/5 4/1 21/19 105/23 163/4 164/1 255/10 276/19 federal [14] 125/16 125/18 126/10 128/6 142/23 146/22 291/23 303/1 303/2 303/21 303/25 311/6 312/3 312/19 feed [1] 183/2 feeding [1] 220/15 feel [1] 225/20 feels [1] 219/14 fees [2] 159/12 308/13 feet [5] 149/6 190/18 190/20 202/7 220/12 fell [1] 184/12 fellow [1] 177/7 fellows [1] 176/16 fellowship [14] 176/6 176/12 176/14 176/15 176/20 176/22 177/1 177/4 177/6 177/16 177/17 177/18 177/20 249/20 felt [1] 161/8 femurs [1] 144/17 few [7] 85/25 119/6 142/11 158/9 164/25 167/19 255/24 fewer [1] 57/18 fib [2] 181/12 181/19 fibrillation [1] 181/11 fidelity [4] 79/19 79/21 80/24 81/13 field [6] 98/21 184/15 187/15 189/15 258/15 259/9 fields [2] 257/14 257/19 fight [2] 26/6 26/10 figure [5] 11/15 121/16 194/25 235/12 242/14 fil [1] 288/24 file [6] 14/19 126/8 126/12 126/14 166/12 186/13 filed [2] 290/15 307/16 filing [1] 166/11 fill [1] 69/12 filled [2] 103/21 251/3 film [1] 130/17 filmed [1] 130/13 final [4] 124/12 124/13 165/1 165/3 finally [4] 84/4 125/12 195/4 228/20 find [13] 49/5 113/2 138/19 145/13 166/9 203/2 242/2 266/15 266/17 296/8 298/8 298/10 299/8 finding [6] 4/11 25/4 116/4 119/25 137/17 152/7 findings [17] 115/11 115/13 116/11 117/8 118/25 119/13 119/23 135/12 138/1 150/20 150/22 151/6 209/10 210/8 211/10 212/1 212/4 finds [3] 290/21 290/24 299/25 fine [15] 8/3 69/15 70/22 85/20 142/16 142/25 163/16 204/17 256/24 270/11 291/7 300/4 302/11 308/8 308/14 fine-tuning [1] 142/25 fingers [1] 27/15	fingertips [1] 27/22 finish [3] 76/5 255/6 272/17 finished [4] 104/2 104/8 125/7 173/11 finishing [2] 112/6 127/3 finite [5] 46/25 47/1 47/7 54/5 94/4 firefighter [1] 222/13 firm [3] 13/18 37/6 111/9 first [78] 4/8 17/20 18/2 31/5 35/8 38/14 42/2 55/13 64/12 64/16 64/24 65/1 65/9 65/22 66/4 66/7 66/19 67/20 67/24 68/22 72/12 96/22 108/9 109/9 112/6 112/12 112/17 114/2 114/12 114/13 114/15 123/19 123/21 123/22 124/5 127/16 129/17 133/9 135/18 140/5 140/7 163/12 173/7 176/2 177/18 180/16 190/11 190/24 191/1 192/13 193/12 193/20 193/23 194/13 194/15 195/1 195/7 198/3 207/20 231/15 232/5 244/9 252/14 252/16 253/1 257/5 263/15 285/11 285/15 287/11 292/5 296/25 305/9 306/22 308/7 308/14 310/24 311/2 fit [1] 289/4 fitted [1] 125/3 five [22] 41/19 60/6 77/21 100/6 100/8 120/15 121/1 125/14 147/12 147/20 159/25 171/4 184/12 196/2 197/18 197/20 202/7 215/8 217/6 241/18 264/17 277/24 five feet [1] 202/7 five-foot [1] 41/19 fix [3] 250/9 250/19 250/21 fixing [1] 290/17 flat [14] 27/6 27/8 27/11 27/19 28/7 28/17 65/4 65/19 65/24 67/2 67/11 71/4 283/16 283/17 Fleet [1] 71/20 flew [4] 236/8 236/12 236/16 236/21 flex [2] 196/7 196/8 flexing [1] 196/16 flexion [2] 196/11 208/1 flexure [1] 225/15 Flight [1] 252/17 flip [1] 110/8 flip-chart [1] 110/8 flipped [1] 15/9 flips [1] 156/4 floor [5] 29/11 29/11 182/4 235/19 235/21 flow [2] 223/21 228/16 flown [2] 232/5 236/5 flows [1] 159/25 fluids [1] 179/20 fly [1] 236/19 flying [1] 266/2 FMVSS [9] 88/9 88/20 96/11 125/22 126/3 126/5 126/8 126/21 128/4 FMVSS216 [4] 56/24 62/20 71/2 76/2 foam [1] 103/21 focus [5] 123/15 138/14 138/19 169/16 295/7 focused [5] 36/8 112/5 112/8 112/10 117/23 focuses [1] 36/4 fold [4] 27/10 27/10 28/10 29/8 folded [4] 16/13 20/10 28/14 254/2 folding [2] 28/13 28/16 follow [1] 27/5 followed [5] 108/17 258/1 258/7 258/14 300/22
---	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

F	Document 383	Page 331 of 362
<p>following [6] 26/22 27/13 112/1 185/6 304/19 304/20</p> <p>follows [4] 110/21 168/22 284/15 291/19</p> <p>foolish [1] 7/7</p> <p>foot [5] 41/19 97/4 112/15 174/3 210/11</p> <p>footage [1] 171/20</p> <p>football [2] 191/7 281/18</p> <p>force [16] 34/11 58/2 58/9 58/11 59/16 66/13 75/4 75/18 75/24 75/25 76/17 92/2 92/5 92/7 100/15 146/17</p> <p>forced [1] 66/10</p> <p>forceful [1] 152/20</p> <p>forces [13] 28/9 30/14 30/14 30/15 32/4 59/11 59/19 59/25 65/20 100/13 140/22 145/14 271/23</p> <p>forcing [1] 34/12</p> <p>ford [210] 1/6 5/2 5/7 5/8 6/4 6/16 6/18 6/22 6/24 7/25 8/4 9/23 10/4 10/10 10/18 12/24 13/6 13/11 13/19 13/23 14/2 14/4 14/6 14/13 14/20 26/5 37/1 37/7 38/2 42/17 45/9 46/13 46/23 47/13 47/13 48/24 49/18 50/19 51/14 52/14 52/24 53/5 53/7 54/6 54/17 54/18 54/23 55/14 55/22 60/12 60/22 61/19 62/17 66/21 69/20 69/21 70/14 71/25 72/8 72/13 73/8 73/16 73/18 76/12 77/15 78/9 79/17 82/23 84/9 86/11 86/11 88/1 88/4 92/18 93/8 97/5 98/12 99/13 99/17 99/20 101/10 101/13 104/25 105/6 105/8 106/7 107/12 110/6 111/14 111/15 111/16 112/7 112/9 112/12 112/17 113/16 113/19 113/20 113/25 114/21 114/22 114/23 114/25 116/16 118/4 118/5 118/11 118/14 118/22 118/25 119/2 119/2 121/16 122/14 122/17 122/22 126/9 128/4 128/23 128/24 128/25 129/3 129/5 129/10 129/11 130/1 131/17 143/1 143/13 146/17 146/18 147/2 147/4 154/2 156/13 156/17 156/17 157/11 157/19 157/22 158/6 158/8 158/11 158/12 158/13 158/16 158/17 159/1 159/8 159/10 159/13 159/17 160/15 160/19 160/19 160/25 161/10 161/17 162/3 163/10 163/11 189/7 232/1 232/3 236/7 246/7 247/4 247/21 247/23 248/23 256/19 259/21 259/24 265/10 265/13 265/15 265/25 268/2 268/24 272/9 272/24 273/1 275/2 275/3 282/19 283/3 283/21 283/22 285/17 285/22 286/6 286/24 289/21 289/23 290/3 291/21 292/13 293/12 295/12 295/13 295/16 295/25 296/12 296/14 296/20 301/25 303/12 304/18 305/20 307/17</p> <p>Ford's [45] 5/17 6/2 6/8 7/25 9/19 13/7 33/19 52/20 62/13 62/18 62/19 77/18 77/23 100/5 106/6 106/12 106/13 107/1 108/14 121/3 128/8 158/7 158/23 159/9 210/20 231/15 237/25 238/5 238/17 246/7 247/2 247/9 254/24 263/15 272/9 275/24 283/6 283/6 293/7 293/9 294/13 295/22 296/23 305/9 308/5</p> <p>Ford-related [1] 159/13</p> <p>foregoing [1] 312/6</p> <p>forensic [7] 135/8 152/3 153/21 154/13</p>	<p>257/10 257/15 277/15</p> <p>forget [5] 4/19 48/9 56/25 60/18 100/5</p> <p>forgot [1] 204/19</p> <p>form [7] 81/17 165/4 200/14 224/4 224/12 294/18 306/13</p> <p>formalities [1] 4/13</p> <p>formally [1] 139/3</p> <p>format [1] 312/9</p> <p>formed [5] 84/16 187/4 259/4 259/10 259/13</p> <p>forth [2] 86/17 115/18</p> <p>FORTUNA [1] 2/6</p> <p>Fortunately [1] 229/4</p> <p>forum [1] 119/12</p> <p>forward [19] 23/12 27/23 67/22 109/1 110/7 144/2 144/15 145/2 145/5 160/10 192/21 192/21 193/11 202/10 205/4 205/6 205/7 222/3 227/18</p> <p>found [13] 98/5 137/24 150/12 150/15 150/25 151/6 152/3 186/15 211/16 211/18 214/21 243/6 243/16</p> <p>foundation [5] 72/10 72/16 127/3 129/22 276/5</p> <p>foundational [1] 109/25</p> <p>founder [1] 12/5</p> <p>four [23] 24/1 60/6 122/2 130/8 179/6 190/22 196/2 216/20 216/20 219/5 260/5 268/3 269/1 269/5 270/20 271/2 271/4 271/8 272/10 272/14 273/6 273/9 280/14</p> <p>four-star [8] 269/5 271/2 271/4 271/8 272/10 272/14 273/6 273/9</p> <p>four-wheel-drive [2] 122/2 130/8</p> <p>fraction [1] 141/16</p> <p>fractions [1] 148/24</p> <p>fracture [19] 196/20 196/23 196/24 197/19 197/20 197/21 197/21 197/22 197/23 208/6 209/2 210/16 211/12 211/13 213/19 224/15 225/16 225/18 225/25</p> <p>fractures [26] 197/6 197/9 197/14 197/24 198/11 207/22 207/22 208/2 208/4 208/12 208/15 208/16 208/16 209/3 209/18 209/22 210/7 212/6 225/1 225/4 225/4 227/3 230/16 252/11 253/11 263/22</p> <p>frame [4] 89/7 94/6 112/21 113/13</p> <p>Francis [1] 265/25</p> <p>Frank [2] 11/10 149/16</p> <p>fresh [2] 40/10 176/17</p> <p>fresher [1] 12/1</p> <p>friend [1] 50/19</p> <p>front [42] 16/11 17/4 19/17 21/18 23/9 23/10 26/21 28/24 29/22 29/25 45/21 48/4 48/7 48/10 48/17 50/22 50/23 64/14 65/1 110/8 127/19 130/11 139/18 140/9 140/11 140/14 140/15 141/5 141/13 143/24 146/22 168/6 209/9 210/12 216/15 225/15 235/1 236/21 247/5 268/3 269/5 294/25</p> <p>front-end [2] 268/3 269/5</p> <p>frontal [36] 131/17 140/8 141/4 141/24 142/1 143/17 143/22 144/15 144/16 144/21 156/6 156/7 170/22 171/16 175/2 188/18 192/20 208/16 209/7 212/6 224/17 229/14 263/12 264/8 268/22 268/25 269/7 270/17 270/22 271/17 271/25 272/14 273/6 273/12 281/15 299/20</p> <p>full [13] 66/6 79/22 117/9 118/12 129/6</p>	<p>131/23 173/24 174/4 174/14 179/18 222/15 253/20 253/20</p> <p>full-scale [1] 129/6</p> <p>full-size [1] 173/24</p> <p>fully [4] 148/13 303/14 303/14 303/14</p> <p>function [2] 12/10 145/23</p> <p>functions [1] 145/22</p> <p>fund [1] 246/22</p> <p>further [2] 97/20 283/18</p> <p>fuse [1] 228/5</p> <p>fuzzy [1] 134/8</p>
		G
		<p>GA [9] 1/13 1/15 1/16 1/18 1/20 1/24 2/2 2/5 2/10</p> <p>GAMD.USCOURTS.GOV [1] 2/15</p> <p>gander [1] 163/13</p> <p>garage [3] 82/23 82/24 83/5</p> <p>gather [1] 13/14</p> <p>gauge [3] 49/9 49/20 50/22</p> <p>gave [11] 34/5 44/6 80/16 114/15 148/7 181/21 216/16 233/4 259/2 293/21 295/5</p> <p>GBWR [1] 62/16</p> <p>GCS [3] 227/6 227/7 229/22</p> <p>general [15] 9/20 13/7 55/25 120/20 156/13 165/8 172/25 213/18 244/20 245/4 245/9 245/14 249/1 258/7 285/13</p> <p>generalized [1] 259/15</p> <p>generally [13] 12/8 12/9 12/12 38/16 56/1 78/21 80/1 257/13 257/19 258/1 258/14 258/18 259/9</p> <p>gentleman [2] 216/14 226/25</p> <p>gentlemen [6] 11/17 105/18 162/22 165/22 284/3 287/24</p> <p>genuine [1] 290/21</p> <p>geometry [2] 31/2 31/9</p> <p>GEORGIA [34] 1/1 1/6 4/4 26/6 151/8 151/25 152/12 191/23 232/1 232/7 232/9 232/10 232/12 232/16 232/17 232/22 232/25 233/6 234/8 234/14 236/6 236/9 236/20 237/2 244/4 251/24 264/21 265/24 285/18 285/23 293/8 301/22 308/6 312/5</p> <p>gest [1] 297/18</p> <p>get [117] 5/18 5/19 11/8 14/11 14/14 16/20 17/22 18/4 18/9 18/23 19/2 21/17 30/11 34/15 34/24 36/5 45/15 46/15 46/17 53/19 59/2 60/4 60/8 62/2 62/22 63/7 65/25 69/8 71/14 76/4 85/17 91/21 91/25 107/6 109/18 110/15 112/15 114/13 115/6 118/10 121/13 123/14 124/5 124/7 124/24 134/10 138/16 138/17 139/14 148/14 149/5 153/12 166/20 168/13 171/23 173/12 173/23 175/12 175/13 176/1 176/2 177/20 178/3 178/8 179/21 181/2 182/11 186/17 186/19 188/15 194/8 195/25 197/6 201/20 205/17 215/24 216/17 220/11 222/25 223/1 223/9 223/11 223/18 226/15 226/17 226/25 228/4 228/10 228/12 228/15 228/23 230/14 231/1 235/25 241/7 245/7 245/11 246/13 252/17 252/18 253/9 255/6 258/22 260/17 260/19 260/19 263/23 264/1 270/20 287/24 288/10 288/16 289/1 289/1 289/7 301/20 306/14</p> <p>gets [14] 29/5 124/22 156/21 176/4</p>



<p><b>G</b> Case 4:23-cv-00088-CDL Document 383 Filed 03/21/25 Page 332 of 362</p> <p>gets... [10] 197/16 207/21 208/10 215/20 218/3 219/17 227/20 227/20 228/20 241/7 getting [11] 34/10 43/12 53/19 61/1 72/4 108/7 123/18 196/19 198/9 209/8 223/20 ghost [1] 192/23 give [41] 8/9 34/5 34/18 40/7 53/16 55/10 63/16 79/24 83/11 97/9 100/11 106/17 117/9 120/6 120/21 126/21 136/18 136/20 137/15 143/2 161/13 167/22 171/8 171/14 176/20 185/17 187/1 190/1 212/17 214/8 230/20 230/20 230/23 239/25 288/2 288/6 293/1 293/3 303/5 305/13 307/6 given [7] 114/16 115/9 165/7 176/25 180/19 293/10 294/23 gives [5] 124/6 133/20 141/13 198/8 268/21 giving [4] 80/17 129/25 220/6 232/1 glasgow [1] 227/6 glass [2] 17/11 17/25 go [83] 10/8 10/14 17/13 32/15 43/23 44/8 51/3 54/22 59/19 61/8 63/20 71/13 74/22 76/7 81/1 86/16 92/16 93/18 95/11 116/22 117/3 117/12 121/2 123/17 125/3 125/13 130/5 131/7 137/19 143/12 147/23 148/11 153/14 164/17 164/20 171/24 175/1 178/6 179/10 179/12 179/16 183/13 183/13 190/22 191/13 193/20 194/18 195/11 195/15 201/10 204/2 205/20 217/4 218/19 219/1 221/17 226/4 227/9 227/9 236/9 239/5 240/13 242/2 243/20 245/19 245/25 247/12 252/17 255/7 267/24 273/5 283/20 284/8 287/9 287/14 287/18 287/25 289/14 300/13 305/1 306/11 310/10 310/12 goal [4] 112/12 112/16 113/1 113/14 goals [2] 124/6 125/8 God [3] 110/13 168/11 241/17 goes [25] 26/24 27/1 35/15 35/16 59/21 59/22 65/18 113/6 122/5 149/6 155/9 192/25 193/9 193/25 194/17 194/22 198/7 207/25 215/18 215/25 218/17 274/2 277/9 304/6 308/22 going [190] 4/9 8/8 8/9 8/19 14/11 14/12 21/20 21/20 23/4 23/14 27/4 28/6 28/7 28/16 29/17 30/11 30/25 30/25 31/8 31/9 31/11 31/21 32/4 32/25 35/18 38/17 39/14 40/11 40/25 47/12 48/8 48/16 51/23 55/2 55/10 57/5 58/9 59/1 59/17 61/21 62/5 71/2 75/15 77/6 79/23 83/11 84/8 85/12 90/5 90/10 91/20 93/11 93/14 98/17 105/19 108/5 108/23 109/1 109/17 109/21 117/20 121/7 121/11 121/22 122/1 122/3 122/4 123/21 127/4 130/7 130/9 133/25 134/12 134/23 136/19 137/14 137/19 137/21 142/2 146/9 148/21 149/2 154/11 154/14 160/11 162/23 164/23 169/16 169/22 169/25 170/14 170/17 170/18 170/20 170/23 171/1 171/4 171/13 171/17 171/21 175/1 178/5 179/11 179/25 190/1 190/4 190/10 190/17 190/20 191/22 192/5 192/12 192/17 192/20 192/21 192/22 193/11 193/20 193/23 195/14 195/15 195/20 196/10 196/10 198/3</p>	<p>198/7 199/14 202/8 202/24 203/12 204/14 204/15 207/1 207/1 207/2 210/18 210/22 213/19 215/11 215/12 215/23 215/24 216/1 217/18 218/23 219/18 222/14 226/14 226/15 227/1 228/11 228/12 229/5 237/10 237/12 243/13 260/14 261/16 262/19 262/20 262/20 277/22 278/19 282/2 284/7 284/10 287/14 287/16 288/21 288/22 288/24 289/3 289/4 291/10 291/10 291/11 291/16 293/1 293/3 294/11 295/7 295/11 297/20 297/23 299/17 299/17 299/21 300/19 302/10 307/9 gone [9] 22/9 35/6 79/5 119/20 148/13 176/18 211/12 216/7 243/15 good [31] 4/6 11/24 11/25 11/25 36/2 55/2 56/16 58/22 77/9 99/10 110/24 110/25 125/3 163/12 163/13 168/25 169/1 184/9 211/23 228/6 231/13 231/14 288/25 289/2 289/15 299/2 302/13 305/24 305/25 306/3 306/5 Googled [1] 301/17 goose [1] 163/13 gosh [1] 204/9 got [107] 8/4 15/13 17/25 23/21 29/7 30/7 31/16 33/14 34/5 36/10 53/17 55/11 83/4 83/13 85/16 102/25 109/15 112/18 112/21 112/22 128/22 142/11 154/23 155/4 155/5 156/5 160/1 160/2 163/21 172/11 173/2 173/9 175/13 183/1 183/13 189/20 190/19 190/23 192/18 193/1 193/9 193/21 195/12 196/1 196/8 196/12 196/23 197/16 197/19 197/19 197/20 197/20 197/21 201/3 207/17 208/3 215/8 216/18 217/3 217/6 217/15 217/16 217/16 220/7 220/10 220/16 220/19 220/20 220/20 222/3 225/5 226/22 227/3 235/25 241/22 244/6 246/9 248/18 251/21 252/5 253/10 253/21 263/12 267/4 269/9 269/10 269/14 271/1 271/7 282/21 285/11 286/23 287/1 289/9 289/12 289/19 292/9 293/16 293/22 293/24 294/17 297/10 297/13 297/23 298/23 299/25 310/19 gotten [7] 192/25 201/18 208/14 263/21 275/7 293/23 294/1 government [5] 125/23 146/16 237/19 270/2 270/9 Governments [1] 125/19 governs [1] 291/24 gracious [1] 176/20 graduate [3] 245/19 246/2 246/9 graduated [1] 245/15 grainy [1] 134/10 gram [1] 219/21 grandfather [1] 244/17 grant [1] 4/9 granted [2] 73/8 290/1 granting [1] 290/11 granular [1] 213/23 graph [1] 269/8 grass [3] 21/3 21/4 148/19 gravel [1] 148/18 gravity [1] 58/13 great [10] 11/14 45/24 129/5 181/13 194/6 210/22 226/11 228/8 228/11 241/3 greater [3] 231/6 271/5 281/7 greatly [1] 165/7</p>	<p>green [1] 34/25 grew [2] 11/20 243/7 ground [49] 16/18 20/11 20/16 20/17 20/18 20/24 21/5 21/6 22/22 23/18 32/2 32/2 32/7 35/7 38/9 38/10 38/10 58/5 58/12 58/15 59/13 64/13 64/14 64/22 65/18 65/19 66/1 66/18 67/11 67/24 68/3 75/19 75/24 91/2 94/12 94/15 94/16 94/23 100/12 129/17 130/12 140/5 140/7 140/9 140/12 149/7 156/4 190/23 299/5 group [30] 112/19 112/22 119/12 125/5 161/4 161/4 161/16 161/24 162/2 162/6 162/8 162/14 162/17 173/13 173/14 173/16 173/18 173/18 173/22 176/10 178/8 233/23 234/1 234/3 234/7 234/14 234/18 235/15 236/7 249/14 growing [3] 219/17 243/8 285/14 grown [1] 252/20 GSP [1] 191/20 guaranteed [1] 271/2 guard [1] 186/13 guess [4] 7/6 8/10 9/19 162/23 guessing [1] 13/17 guesstimated [1] 158/3 Gunn [4] 10/5 204/10 262/22 262/24 gunshot [1] 180/5 gurgling [1] 222/7 guy [4] 41/8 41/8 102/8 184/12 guys [7] 82/24 184/2 191/6 199/8 209/17 209/24 258/25 Gwinnett [1] 6/15</p> <p><b>H</b></p> <p>had [219] 5/6 5/9 5/12 5/15 7/13 11/10 13/7 13/22 15/11 23/19 24/7 33/8 34/5 36/16 38/5 48/7 52/7 61/20 62/21 64/1 70/5 71/17 77/11 77/13 77/14 77/15 81/4 82/12 82/22 83/13 90/16 99/7 104/2 105/11 116/5 118/2 119/20 123/10 129/16 132/3 161/3 171/12 172/10 172/17 172/22 173/17 174/2 174/7 176/9 176/16 176/18 177/16 177/17 177/18 178/2 180/14 181/19 182/4 182/17 182/19 182/19 182/21 182/23 183/25 185/6 186/12 188/24 188/25 193/8 194/6 196/3 198/2 199/20 200/9 201/2 201/8 201/9 201/11 201/18 202/5 203/19 204/7 204/9 204/11 204/12 207/6 207/8 207/19 207/22 207/25 208/15 214/6 218/8 219/11 220/21 221/2 221/12 221/21 221/21 222/12 222/14 223/2 223/2 223/3 225/4 225/12 225/14 225/14 225/16 226/8 226/10 226/16 227/14 228/2 228/14 229/21 230/2 230/9 230/11 236/23 237/3 237/22 238/2 238/2 238/10 238/14 238/14 239/4 239/13 241/13 241/21 241/21 241/23 242/5 242/6 242/6 242/7 242/10 242/23 242/25 243/2 243/14 244/3 247/17 249/21 251/9 251/9 251/12 251/19 252/10 252/17 252/19 252/22 253/12 253/25 254/8 254/11 254/16 258/14 258/16 258/19 258/20 258/21 259/1 259/4 259/6 260/10 260/20 260/22 263/10 264/4 264/6 266/17 268/3 268/12 271/24 272/11 272/14 274/7 274/11 274/25 275/7</p>
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H Case 4:23-cv-00088-CDL Document 383 Filed 03/21/25 Page 333 of 362		
<p>had... [37] 275/9 275/15 276/25 277/3 277/4 277/6 277/7 277/17 277/17 278/8 279/6 279/22 279/24 281/19 281/20 282/1 282/5 282/25 285/17 292/22 293/22 294/1 294/14 294/21 295/3 297/19 297/19 298/14 298/16 298/20 299/8 299/16 302/16 302/22 305/20 306/22 307/13</p> <p>hadn't [4] 5/8 258/5 259/5 259/8</p> <p>hair [6] 251/17 251/19 251/21 252/1 253/6 254/1</p> <p>hairs [1] 218/1</p> <p>half [21] 25/4 39/3 59/9 62/11 111/7 160/7 176/25 195/7 202/7 203/8 203/11 205/1 205/18 205/21 205/22 205/22 216/16 216/19 216/19 224/1 259/12</p> <p>halter [1] 243/1</p> <p>hand [14] 28/21 62/6 77/6 89/23 89/24 102/1 102/4 110/9 152/18 168/7 190/18 191/21 192/3 200/16</p> <p>handed [1] 122/8</p> <p>handle [2] 4/8 4/14</p> <p>handwriting [1] 46/21</p> <p>happen [12] 28/7 30/4 30/17 32/9 90/23 113/4 133/15 179/7 183/21 193/24 198/1 288/1</p> <p>happened [16] 17/16 31/13 37/15 38/2 41/4 68/17 84/9 94/12 130/21 163/14 198/12 201/8 227/22 243/17 283/9 299/19</p> <p>happening [10] 18/6 58/13 91/25 130/20 130/22 131/14 141/16 143/8 147/14 215/9</p> <p>happens [10] 28/13 40/19 49/7 65/13 113/5 146/5 185/2 193/24 196/12 288/15</p> <p>happy [2] 231/2 290/12</p> <p>hard [10] 41/25 106/12 106/20 107/2 107/8 108/1 108/7 214/5 228/11 228/12</p> <p>harder [2] 100/9 309/1</p> <p>hardware [4] 132/11 136/12 137/10 138/20</p> <p>hardworking [1] 265/24</p> <p>harm [1] 309/8</p> <p>HAROLD [2] 2/2 114/4</p> <p>HAROLD.MELTON [1] 2/3</p> <p>Harrison [6] 24/17 222/6 252/17 254/12 254/13 260/20</p> <p>has [165] 6/18 6/20 7/20 8/4 10/10 13/11 13/18 13/19 14/13 16/17 18/1 20/9 20/12 20/23 26/12 29/9 30/7 32/17 32/18 32/19 34/18 35/2 35/11 37/10 40/17 42/23 42/24 43/2 43/8 45/18 45/24 46/4 59/5 65/16 66/21 68/7 72/24 73/5 75/6 79/5 81/9 88/20 94/6 94/7 95/2 96/12 97/17 97/17 100/12 100/14 104/3 104/5 104/18 107/11 112/4 112/9 112/11 114/9 114/21 114/22 114/24 115/7 116/18 118/15 118/22 118/23 119/6 122/15 122/24 123/24 124/14 127/6 128/11 128/24 132/10 134/25 135/2 135/3 137/11 140/2 141/12 141/22 145/19 145/22 146/16 146/16 147/23 155/5 156/11 159/1 160/1 160/14 163/7 165/25 180/16 181/10 181/11 181/12 184/15 186/17 189/20 191/22 192/6</p>	<p>197/15 197/15 197/20 197/21 198/24 204/8 207/17 208/1 208/2 208/3 210/19 211/21 212/16 217/6 217/16 217/16 217/18 217/24 218/24 219/10 219/20 222/3 223/25 225/5 225/6 234/10 242/12 243/20 247/5 250/7 250/11 250/16 250/24 253/10 255/22 262/1 262/6 265/15 266/15 269/8 269/9 269/9 270/23 270/25 272/9 287/1 287/13 288/4 288/4 289/12 289/19 289/21 290/3 290/5 294/23 296/19 299/3 300/23 303/12 303/16 304/23 310/14</p> <p>hasn't [4] 11/5 219/1 234/11 300/21</p> <p>haul [1] 122/5</p> <p>have [510]</p> <p>haven't [18] 22/9 23/8 44/12 54/18 83/12 193/22 204/13 232/10 232/12 251/11 254/19 258/6 266/14 266/20 278/17 285/19 301/13 306/22</p> <p>having [19] 84/14 103/17 110/20 121/10 168/21 180/20 181/4 181/25 213/24 213/24 218/10 227/8 240/4 240/4 253/11 254/15 281/21 284/14 286/7</p> <p>he [263] 5/21 5/22 6/11 7/15 7/15 7/20 7/24 9/16 16/4 23/6 24/7 24/11 24/14 24/15 24/16 24/20 24/21 25/3 33/23 42/17 42/19 42/22 42/22 43/4 43/5 43/14 43/15 44/5 48/24 48/25 61/20 61/21 69/18 69/20 69/21 79/18 79/19 79/20 79/23 80/24 81/4 81/19 81/19 82/4 82/5 82/8 82/12 82/14 86/3 86/20 88/13 88/14 89/1 90/16 90/22 91/21 93/7 94/7 94/8 94/9 94/9 94/10 94/12 94/14 95/17 96/8 96/15 96/16 96/20 96/22 96/24 96/25 96/25 97/1 97/2 97/5 97/7 97/12 97/13 97/14 97/15 97/17 97/19 97/19 97/22 103/19 103/19 103/20 104/3 104/4 104/5 104/8 104/13 104/20 104/23 115/13 115/21 116/1 120/6 129/22 129/24 129/24 135/2 136/25 136/25 137/20 148/4 148/5 148/7 148/7 151/4 162/13 162/14 171/12 171/13 174/22 174/23 176/6 184/12 184/13 186/14 187/1 189/20 192/25 197/15 197/16 197/16 197/18 197/20 197/21 197/24 198/2 198/3 198/4 198/6 198/7 198/7 198/10 199/22 199/24 200/2 207/8 207/9 210/24 211/16 211/18 211/23 212/9 212/17 212/18 212/18 215/21 215/22 216/1 216/4 216/4 216/5 216/6 216/6 216/7 216/7 216/11 216/11 216/12 216/13 216/13 216/14 216/18 218/14 218/15 219/1 220/22 222/7 222/15 223/14 223/22 223/23 223/24 224/1 225/3 225/4 225/5 225/6 225/9 225/12 225/14 225/14 225/15 225/24 226/10 226/12 226/16 226/17 226/18 227/14 227/14 228/9 228/18 228/25 228/25 229/9 229/22 229/22 230/2 230/4 230/4 230/5 230/6 230/7 230/7 236/23 237/2 238/14 240/11 241/2 241/2 241/5 241/5 243/5 244/20 245/1 245/5 245/11 252/22 253/11 255/5 256/9 256/11 260/1 261/7 261/8 262/4 263/10 263/11 263/12 263/21 263/23 263/24 263/25 264/1 264/4 264/6 266/15 266/17 267/19 276/7 276/7</p>	<p>276/9 276/12 276/12 277/11 277/12 279/22 280/2 280/20 285/9 285/12 286/10 286/11 287/3 293/2 307/6 311/4</p> <p>he's [43] 6/8 6/8 22/7 23/12 43/19 44/5 55/3 129/25 136/19 136/19 137/9 137/13 137/19 192/25 193/1 193/4 197/19 197/19 197/19 198/9 207/7 215/8 216/16 218/11 218/15 223/24 225/6 226/12 226/18 226/22 227/2 227/3 230/4 230/5 240/5 240/5 241/3 244/6 263/20 263/20 267/19 278/18 280/15</p> <p>head [35] 38/22 62/5 63/25 81/17 178/19 178/25 181/14 196/9 203/15 203/25 206/12 206/23 207/3 216/22 221/25 222/24 223/21 226/11 227/14 227/17 229/19 240/14 253/9 264/4 267/17 267/17 274/8 274/12 274/25 275/3 275/12 286/8 286/8 286/9 286/12</p> <p>head/neck [2] 274/8 274/25</p> <p>header [16] 17/9 26/25 48/4 48/7 48/10 48/17 50/22 50/23 51/12 65/1 66/16 67/23 90/17 91/13 92/3 94/25</p> <p>headers [4] 16/25 17/4 17/4 51/6</p> <p>headings [4] 9/5 9/11 9/25 9/25</p> <p>headlight [1] 250/23</p> <p>headliner [1] 104/4</p> <p>headquarters [1] 246/7</p> <p>headrest [19] 199/12 199/18 202/9 202/11 202/13 203/22 203/24 205/3 205/4 206/13 207/4 222/1 222/2 251/18 252/2 253/8 253/22 254/1 260/15</p> <p>health [4] 186/10 279/3 281/6 281/7</p> <p>healthy [2] 272/4 273/13</p> <p>hear [9] 18/11 24/7 59/2 149/24 156/5 181/13 207/3 284/7 293/16</p> <p>heard [37] 4/15 18/1 26/10 42/14 44/7 45/24 46/4 62/18 79/16 82/21 108/9 114/12 114/24 119/6 120/14 122/24 128/24 141/24 166/1 176/5 176/23 184/2 199/8 204/13 211/22 259/25 282/2 284/21 285/19 285/20 285/21 289/13 293/4 294/9 294/12 301/4 303/16</p> <p>hearing [2] 299/7 299/11</p> <p>hears [2] 216/7 222/7</p> <p>hearsay [6] 164/17 256/8 256/9 270/1 270/4 286/2</p> <p>heart [55] 180/17 180/23 180/23 181/5 181/7 181/8 181/11 181/22 182/1 182/5 182/13 182/16 182/16 182/17 182/25 183/2 183/2 183/6 208/18 217/1 217/6 217/7 217/19 217/25 218/1 218/2 218/3 218/5 218/17 218/19 219/14 219/16 219/17 219/21 219/22 219/22 219/25 220/7 220/9 220/14 220/22 221/2 235/23 239/18 239/21 240/21 241/22 242/5 242/6 243/7 276/3 280/4 280/8 280/9 299/8</p> <p>heartbeat [1] 243/3</p> <p>hearts [1] 241/24</p> <p>heavier [7] 58/2 63/23 64/2 64/3 75/23 100/9 100/14</p> <p>heavy [4] 57/25 58/21 58/23 76/18</p> <p>heavyweight [1] 56/17</p> <p>height [5] 154/17 155/17 203/9 203/10 205/7</p>

H Case 4:23-cv-00088-CDL Document 383 Filed 03/21/25 Page 334 of 362		
<p>held [3] 31/10 105/18 312/8  help [16] 50/23 61/8 104/22 110/13  113/12 114/3 120/19 122/22 143/2  145/14 148/17 168/11 173/1 219/16  227/1 228/4  helpful [2] 50/8 61/12  helping [4] 36/5 178/8 220/7 222/14  helps [3] 145/6 180/11 302/7  hematoma [1] 193/1  hematomas [3] 214/20 224/14 226/8  hemorrhage [2] 198/2 226/9  HENDERSON [1] 2/10  her [149] 17/22 40/2 40/7 40/7 40/22  72/16 72/25 73/7 77/6 134/16 134/16  138/5 150/10 193/6 193/6 195/18  202/12 203/5 205/16 205/16 205/21  206/23 207/18 207/21 207/23 208/9  208/9 208/9 208/15 208/16 208/24  215/1 215/21 216/3 216/6 217/17  217/18 217/20 217/25 218/9 218/10  218/11 219/9 219/10 219/16 219/17  220/7 220/18 220/21 220/21 221/2  221/3 221/4 221/6 221/25 222/6  222/10 223/13 223/21 224/13 224/14  235/3 235/3 235/5 235/5 235/7 235/8  237/3 238/15 239/15 240/8 240/9  240/9 240/12 241/6 242/12 242/14  243/3 243/4 243/7 243/7 243/9 243/9  243/14 243/20 243/21 243/22 243/22  243/23 243/24 243/25 243/25 243/25  247/15 251/12 251/20 251/22 252/1  252/7 253/9 253/23 254/1 254/5 254/9  260/17 260/20 261/16 274/8 274/12  275/17 279/22 280/1 281/22 284/19  284/22 284/22 285/24 285/25 285/25  293/13 293/14 293/14 293/21 293/21  293/24 293/24 293/25 294/7 294/13  294/15 294/16 295/14 295/14 297/5  297/5 297/14 297/20 297/21 297/24  297/25 298/10 298/11 298/11 298/14  298/18 299/1 299/12 299/18 299/20  Herbst [40] 5/4 5/22 7/18 7/19 7/22  21/21 23/2 23/3 29/25 33/1 33/16  35/11 37/11 37/12 59/23 63/1 80/12  80/15 80/16 80/16 80/19 81/2 81/2  81/18 87/8 93/5 93/6 93/22 94/6 94/19  94/21 96/16 97/9 98/12 99/3 99/10  102/21 103/16 104/7 116/1  Herbst's [11] 21/17 33/21 63/17 87/2  87/14 87/19 89/22 89/22 90/7 97/11  102/18  here [127] 5/6 10/21 10/21 19/25 20/21  22/24 23/15 24/7 25/16 32/25 33/15  34/2 34/4 34/15 35/10 35/20 47/19  47/19 53/9 53/13 54/9 59/8 62/4 63/18  65/1 71/13 74/11 76/24 77/1 77/3  77/22 80/15 86/1 88/8 91/7 92/2 93/21  95/21 95/24 96/1 96/2 98/4 107/13  110/2 117/16 117/25 121/23 124/6  124/20 125/1 125/9 125/12 127/11  134/4 134/10 145/21 150/6 150/17  152/2 152/3 152/16 158/21 163/21  164/25 170/1 172/16 174/22 191/16  191/16 191/18 192/12 195/17 195/24  196/3 196/4 196/7 196/23 196/23  197/9 197/10 197/19 197/19 197/24  199/9 200/21 202/6 204/18 205/10  207/23 208/1 209/21 210/17 223/2  223/3 225/19 225/25 227/22 231/25</p>	<p>234/8 236/12 236/16 236/19 236/21  240/15 247/5 247/18 248/24 250/22  262/2 262/19 265/24 266/2 270/21  280/3 285/16 285/20 288/1 288/14  289/6 293/2 294/15 294/15 294/25  296/13 297/22 303/7 304/9  Here' [1] 27/14  Here's [1] 239/10  hereby [1] 312/5  Herman [4] 18/15 150/25 284/24 286/7  hers [1] 229/15  herself [4] 251/8 253/14 295/9 295/10  hey [3] 218/9 238/20 240/14  hi [1] 229/2  hidden [1] 143/23  high [15] 48/11 60/4 60/5 60/8 97/10  130/17 133/15 175/14 181/20 188/23  216/23 220/8 228/16 229/24 260/19  higher [14] 13/15 18/19 19/6 58/6  62/24 76/17 85/8 86/13 86/18 99/24  181/11 193/9 225/5 271/2  highlight [3] 89/10 295/4 295/12  highlighted [2] 49/13 305/10  Highway [5] 57/14 99/20 176/15  176/21 176/23  Hikmat [1] 69/15  hill [8] 6/14 6/14 42/8 42/9 42/11 42/18  42/20 302/11  him [43] 4/19 24/20 43/13 108/24  123/14 136/18 137/15 162/12 186/15  192/8 211/1 211/22 212/20 216/12  216/17 218/13 224/1 224/2 226/19  227/1 227/2 228/14 228/16 228/16  228/20 228/23 229/2 229/2 229/4  229/6 229/8 229/23 236/23 237/2  239/6 256/13 264/5 270/7 276/7  278/18 285/9 292/19 293/2  himself [1] 198/8  hindsight [4] 43/5 43/15 43/22 44/8  HIPAA [9] 239/3 239/4 278/25 279/2  279/3 279/10 282/19 282/22 283/1  hips [1] 261/16  hire [1] 13/21  hired [4] 12/22 14/1 26/12 232/4  hires [2] 14/18 14/23  hiring [1] 122/13  his [109] 21/25 23/13 24/4 24/18 24/19  42/19 49/3 49/7 50/22 69/17 69/19  80/20 81/18 82/7 82/19 87/8 90/8  90/22 96/8 97/6 97/16 97/20 103/6  103/25 115/13 115/17 116/20 127/6  127/6 129/25 148/2 148/6 151/4 151/6  151/7 159/22 160/6 171/11 171/14  171/15 171/16 171/20 176/6 192/10  192/25 193/1 195/14 195/15 197/15  197/15 197/16 197/16 198/4 198/8  199/19 199/20 199/22 200/2 202/6  211/9 212/4 212/17 212/19 215/18  215/25 216/4 220/22 222/15 224/24  225/4 226/24 227/14 227/16 228/23  229/7 229/12 229/15 229/16 229/16  230/6 234/21 234/24 234/24 236/24  238/2 238/3 238/14 238/14 238/16  239/13 239/14 239/15 239/17 239/19  239/20 239/22 240/11 245/7 252/18  255/6 260/2 260/8 263/12 264/2 264/4  264/6 285/9 286/8 286/12  history [11] 28/20 52/3 161/22 161/23  217/14 220/20 220/23 226/24 238/15  250/6 250/18</p>	<p>hit [25] 16/18 32/2 64/16 64/21 68/20  91/2 91/9 930/9 179/15 184/12 186/12  193/12 193/12 193/13 193/18 193/18  193/20 193/21 193/23 194/3 195/1  196/19 207/25 223/1 275/16  hitch [2] 215/24 252/18  hits [3] 91/2 91/11 198/3  hitting [4] 17/25 68/4 190/20 205/16  hold [2] 8/14 152/18  holding [1] 51/7  holds [1] 75/13  hollows [1] 103/22  home [3] 112/22 287/25 306/11  honest [2] 220/18 308/17  honestly [2] 13/17 219/10  Honor [162] 5/1 6/5 7/2 7/17 8/13 8/20  10/3 10/11 10/19 11/21 39/16 39/20  39/25 45/2 45/17 55/3 55/5 72/10  72/22 72/25 73/11 76/9 85/22 90/9  93/1 93/8 93/15 95/7 98/25 105/14  105/16 106/17 107/1 107/2 107/10  107/18 107/24 108/10 108/13 109/5  109/6 116/14 116/21 116/25 120/3  120/23 123/3 123/7 123/10 123/16  126/23 127/1 127/18 129/18 129/21  130/25 131/5 135/18 136/17 137/12  137/21 139/2 139/9 148/1 148/4  149/12 151/16 156/20 156/23 162/20  163/14 163/22 164/5 164/15 164/22  165/3 165/6 168/3 168/19 186/22  200/15 204/6 206/2 206/15 209/14  210/18 211/19 212/15 212/21 218/21  231/10 239/2 255/1 255/4 255/20  256/5 256/8 256/12 256/24 261/25  262/6 263/3 268/11 269/23 269/25  270/3 270/5 270/12 272/19 275/18  276/6 278/14 278/19 278/22 282/15  283/18 283/21 284/1 285/1 285/4  285/8 286/17 286/19 286/22 287/6  287/8 287/11 287/19 287/23 289/21  292/4 292/21 293/4 293/20 294/19  295/1 296/17 297/7 298/14 299/3  299/15 300/14 301/3 301/13 302/3  302/7 302/10 302/23 303/12 304/23  305/13 306/1 306/15 306/20 307/10  307/22 308/7 309/1 309/13 309/24  310/8 311/4  HONORABLE [3] 1/9 105/24 164/2  hood [1] 174/2  hoop [1] 208/18  hope [1] 283/2  hopefully [1] 53/17  hopes [1] 288/7  horizontal [2] 66/24 68/10  horizontally [1] 51/3  horizontals [1] 17/6  horror [2] 252/2 253/8  horse [1] 231/23  hospital [12] 171/11 171/11 171/16  171/20 181/3 214/7 223/16 230/17  235/20 237/10 237/14 286/10  hospitalized [1] 279/25  hour [24] 105/18 123/10 130/10 149/7  187/14 188/19 188/22 189/4 190/24  191/2 193/13 194/15 194/17 194/20  224/1 230/24 268/7 268/21 270/22  271/18 271/20 281/10 291/6 291/9  hourly [2] 187/13 187/14  how [120] 4/13 4/25 11/24 12/1 21/15  28/9 30/3 31/3 31/6 32/4 33/18 33/22</p>



<p>H Case 4:23-cv-00088-CDL Document 383 Filed 03/21/25 Page 335 of 362</p> <p>how... [108] 35/5 36/16 39/5 47/9 48/23  52/12 56/3 57/21 58/5 58/14 59/13  70/11 73/16 76/5 91/2 91/11 94/23  100/12 107/7 111/6 111/15 113/4  113/5 113/15 114/16 114/18 115/13  115/15 117/9 117/12 118/14 118/19  120/9 122/12 124/6 126/9 126/14  126/25 127/4 127/5 127/9 128/18  131/11 131/11 131/14 133/21 134/18  136/4 137/17 137/20 143/13 145/10  148/16 154/16 155/14 155/14 158/13  159/24 160/19 165/3 172/21 174/10  174/13 175/12 183/21 184/8 184/20  189/13 189/16 189/18 190/6 192/7  192/9 194/13 194/17 194/25 199/16  200/12 202/22 205/3 205/10 205/17  212/18 218/1 219/20 227/14 229/3  230/15 240/7 240/11 249/23 249/24  252/22 252/24 254/10 255/2 260/10  260/22 264/14 276/12 279/21 283/8  288/9 288/10 295/17 297/10 297/10  310/15  however [2] 9/16 60/1  huge [2] 193/13 196/18  HUIELAW.COM [1] 2/9  human [5] 79/22 81/13 173/17 257/9  257/15  hundred [2] 126/17 193/23  hundreds [2] 126/18 158/1  hurt [6] 5/18 5/19 149/6 184/13 205/12  295/9  HWY [1] 2/8  hybrid [1] 81/2  hydraulically [1] 67/12  hyperlipidemia [1] 217/16  hypertension [1] 217/15  hypotensive [1] 181/10  hypothesizing [1] 52/11  hypothetically [1] 41/19  hypoxia [1] 230/3  hypoxic [4] 226/18 226/20 226/22  227/2  Hyundai [1] 98/1</p>	<p>264/24 264/24 265/1 265/6 270/5  270/11 270/19 287/16 290/17 290/20  293/1 293/3 294/11 299/17 301/8  305/1 306/13 307/9 309/18  I've [42] 7/10 26/10 37/14 49/3 52/22  53/17 55/11 69/17 73/24 98/16 109/13  109/15 112/8 114/2 114/19 116/7  118/5 119/1 119/19 142/11 145/21  150/8 158/3 158/10 158/10 179/13  183/23 183/25 185/16 185/21 187/25  188/1 217/3 220/19 232/9 233/18  240/17 249/6 252/24 285/20 286/24  293/16  ice [1] 148/19  idea [8] 133/20 238/18 276/25 277/6  277/17 278/7 281/23 310/22  identical [1] 83/14  identified [5] 107/6 107/22 109/2 134/8  224/24  identifies [1] 97/13  identify [3] 154/13 209/12 235/18  identifying [1] 35/8  if [302] 5/21 6/16 6/17 9/7 10/21 14/7  14/13 14/17 16/10 18/17 19/4 22/12  27/4 27/8 28/1 30/4 30/24 31/12 31/18  31/22 32/2 33/18 35/21 38/21 38/24  39/1 39/12 40/11 41/15 41/22 42/1  43/22 45/15 48/3 48/17 49/16 52/5  53/14 53/16 54/22 55/7 55/14 56/7  56/11 57/18 58/11 59/5 59/10 60/19  61/8 62/1 63/10 63/21 68/13 68/25  70/14 70/23 71/12 72/24 73/20 74/9  75/10 75/13 75/14 75/20 77/21 77/23  80/15 81/23 83/10 83/13 85/16 86/15  88/5 90/24 92/25 93/11 93/12 94/18  95/14 98/17 99/7 100/7 104/7 104/13  104/23 107/19 108/1 109/1 109/6  109/15 109/16 116/12 125/25 129/9  133/20 135/10 135/25 137/19 138/4  139/12 140/2 141/8 145/2 145/11  146/4 146/9 146/14 147/7 147/8  147/11 147/15 147/23 148/10 148/11  148/13 148/16 149/8 150/2 150/24  152/13 152/15 153/4 153/7 154/4  154/8 158/22 160/9 160/22 166/14  166/15 166/19 166/24 167/14 167/15  167/20 172/17 173/13 175/16 178/7  179/9 179/13 179/14 180/20 181/7  181/25 182/17 182/19 182/23 183/9  184/8 184/9 185/6 185/16 185/18  191/5 192/10 192/11 192/14 192/19  193/8 194/24 195/10 195/17 196/6  196/17 198/22 199/12 201/2 201/8  202/3 202/13 202/15 202/16 202/19  202/24 202/25 203/11 204/7 204/14  205/16 205/22 206/15 206/24 208/8  208/17 208/19 208/22 209/7 209/13  210/1 210/4 210/16 212/12 213/6  214/6 214/7 214/9 215/4 216/24 218/2  218/16 218/19 219/5 219/10 219/13  222/2 222/11 222/23 225/21 225/22  226/2 226/20 226/23 227/15 228/4  230/9 230/18 232/9 236/19 236/23  237/2 237/22 237/23 237/24 237/25  240/20 241/16 241/24 242/19 242/25  243/2 243/23 244/2 251/8 251/14  254/2 254/5 256/9 260/13 260/16  260/18 260/22 261/19 262/2 262/3  262/19 265/10 266/4 267/24 268/4  271/1 271/7 272/4 274/10 275/5</p>	<p>275/11 276/7 278/14 279/11 280/14  282/24 283/3 284/5 284/24 285/24  287/13 288/10 288/14 288/22 289/1  289/4 290/10 290/16 294/17 295/5  295/9 295/10 297/19 297/20 297/23  298/8 298/10 298/15 298/19 298/20  299/8 299/11 299/25 300/12 301/7  301/11 301/24 302/18 303/12 304/2  304/13 305/9 305/23 310/1 310/17  311/4  ignore [2] 53/20 138/14  ignored [1] 254/18  IHS [13] 57/21 59/1 59/3 59/9 62/11  62/12 63/8 63/10 63/13 67/8 68/2  99/12 101/5  ill [2] 308/24 309/25  illustrates [1] 34/8  illustrating [1] 211/18  illustrative [21] 89/19 90/1 90/2 92/17  93/12 93/13 93/16 131/4 135/19 163/8  204/4 209/14 270/1 270/8 270/12  270/13 272/20 274/18 274/22 287/5  287/16  illustrative-type [2] 93/12 93/13  image [4] 92/20 94/1 102/18 210/10  images [2] 95/5 211/7  imagine [1] 196/7  imaging [1] 212/10  immediately [2] 27/9 215/18  immovable [1] 130/9  impact [48] 58/15 60/1 60/2 100/13  129/17 130/12 130/13 140/5 140/7  140/8 140/9 140/12 140/21 141/5  141/13 141/21 141/25 142/1 143/17  144/15 144/16 144/21 147/12 147/13  156/7 175/16 190/24 191/1 191/1  192/13 192/18 192/20 194/14 194/15  194/15 194/17 194/19 207/20 209/7  224/17 268/22 270/22 271/17 272/1  272/14 273/7 281/10 281/11  impacts [11] 64/15 130/11 131/19  131/19 143/22 149/6 156/7 191/15  192/7 194/11 229/14  impeachment [3] 278/14 278/15  303/20  impermissible [1] 211/20  importance [1] 167/22  important [8] 13/19 14/8 14/10 35/25  115/14 136/10 157/22 216/9  impression [1] 222/16  improperly [5] 234/24 235/3 235/7  235/8 298/18  improve [5] 70/9 124/7 146/17 147/3  178/7  improved [1] 103/16  in [953]  inadmissible [1] 6/3  inappropriate [4] 238/6 238/7 239/7  295/20  inboard [6] 16/13 29/10 29/12 30/10  30/14 34/12  incapacitated [1] 84/24  incentives [1] 230/21  inch [4] 203/8 203/13 203/18 226/3  inches [15] 24/1 202/7 203/7 203/13  260/5 260/11 260/13 260/19 260/24  260/25 261/8 261/17 262/17 280/10  287/4  include [5] 97/6 126/10 126/11 147/4  307/11</p>
<p>I</p> <p>I'd [7] 81/1 95/4 171/24 182/23 206/15  233/8 269/8  I'll [4] 45/2 83/9 263/2 269/4  I'm [130] 8/8 12/1 14/4 17/23 19/24  22/19 23/4 27/4 27/6 27/13 27/14  28/16 28/20 28/23 31/19 34/7 35/18  35/20 37/6 40/18 41/5 42/5 47/12  48/16 48/24 51/7 51/21 53/9 57/5  60/18 60/24 62/5 62/17 62/17 77/6  78/21 80/2 83/23 85/19 91/15 94/25  99/15 99/18 101/11 101/12 104/18  107/17 109/17 109/20 115/15 115/16  115/23 118/7 121/6 122/12 123/18  134/1 136/11 137/21 149/24 152/2  152/16 155/12 160/3 164/23 169/3  169/5 170/23 171/1 171/13 171/17  175/1 178/13 180/2 180/2 180/18  180/21 191/21 197/2 205/15 208/17  210/18 211/17 211/18 212/15 215/23  215/24 218/23 219/14 220/3 222/2  225/21 225/22 226/24 237/13 237/18  237/19 237/20 237/21 237/23 243/13  246/20 247/11 250/13 250/16 250/20  255/16 261/23 262/19 264/19 264/19</p>		

<p>Case 4:23-cv-00088-CDL Document 383 Filed 03/21/25 Page 335 of 382</p> <p>included [2] 97/24 258/15  includes [1] 257/20  including [4] 84/9 147/20 154/2 178/4  inconclusive [5] 136/8 150/12 150/16 151/1 152/5  incorporate [3] 76/20 78/13 83/2  incorporated [2] 52/5 78/16  increase [2] 85/2 98/17  increasing [1] 83/25  indecipherable [3] 39/8 124/8 150/1  independent [1] 289/11  indeterminate [2] 197/25 197/25  INDEX [1] 2/17  indicated [5] 53/4 73/20 85/11 94/21 274/21  indicates [2] 72/3 88/8  indicating [3] 13/7 53/5 153/7  indicia [1] 223/5  individual [5] 186/17 206/11 207/7 209/19 215/22  individually [1] 132/9  individuals [3] 84/18 84/25 185/10  industry [11] 19/23 98/11 98/14 122/22 153/7 153/25 172/24 244/18 244/23 244/24 246/19  inference [1] 5/15  info [1] 150/21  information [20] 5/9 25/23 36/1 36/2 115/10 115/19 124/7 166/23 167/5 178/1 178/4 201/6 201/22 238/9 238/10 277/7 279/3 279/4 279/6 282/10  ing [1] 59/10  initial [5] 113/1 115/13 123/25 190/21 193/18  initially [2] 176/4 185/8  initiation [1] 122/7  injured [4] 12/21 43/12 57/18 249/17  injuries [103] 5/10 41/13 84/18 84/20 84/22 84/24 85/9 169/17 169/21 170/20 171/10 171/13 171/14 171/15 172/19 172/21 179/20 180/9 183/21 183/22 184/5 184/16 185/11 189/13 189/14 189/16 190/9 195/21 198/12 200/13 208/8 208/14 209/6 209/9 213/9 213/11 213/15 213/17 213/24 213/25 214/3 214/13 214/13 214/13 217/7 221/6 224/14 224/19 224/24 225/3 226/2 229/12 229/15 229/16 229/24 230/11 231/6 232/4 252/11 263/8 263/10 263/11 263/12 263/17 263/19 263/23 264/4 264/6 267/6 267/12 267/16 267/23 267/25 268/1 271/14 273/25 275/5 275/11 277/20 281/5 282/4 282/5 293/14 293/22 293/23 293/24 294/2 294/14 295/14 296/2 297/10 297/11 297/13 297/18 297/19 297/21 297/23 297/24 298/1 298/6 298/23 299/4 299/18  injury [68] 5/4 8/1 8/2 44/2 44/10 78/20 83/21 84/12 85/4 98/18 102/10 136/15 143/4 144/6 170/18 170/21 173/18 176/12 177/8 183/23 184/1 184/3 184/25 185/1 185/21 185/24 186/23 186/24 188/1 190/8 196/11 200/11 207/11 208/10 213/16 213/18 213/20 213/21 213/25 216/22 216/22 216/23 225/12 227/15 229/20 257/9 257/15 266/5 269/7 270/24 271/1 271/5 271/9</p>	<p>271/11 271/13 271/25 272/2 273/11 273/23 274/7 275/3 275/4 277/23 281/7 281/25 286/8 294/8 295/10  inner [2] 50/5 50/7  input [4] 171/5 215/14 215/15 277/22  inputs [1] 123/20  inside [9] 23/18 96/9 103/19 141/3 185/11 192/18 193/15 205/13 214/5  insisted [1] 239/5  inspect [1] 15/13  inspected [7] 15/6 92/14 247/3 247/14 247/15 261/14 283/12  inspection [12] 15/5 132/25 144/20 145/8 171/19 188/5 199/19 255/25 256/3 256/16 261/24 262/9  instance [1] 155/8  instances [2] 165/25 258/9  instead [8] 23/12 109/13 174/14 213/22 234/22 266/1 280/23 309/25  Institute [4] 57/14 99/19 173/6 245/21  institution [1] 57/15  instruction [5] 292/9 293/1 293/3 300/4 302/25  instructions [9] 164/24 288/6 288/17 291/13 293/6 294/25 310/10 310/12 310/13  instrument [5] 15/16 144/12 173/20 261/2 261/4  instrumented [1] 81/3  Insurance [2] 57/14 99/19  insurers [6] 57/17 99/13 99/16 99/18 99/19 99/20  intact [2] 22/8 199/6  integrate [2] 105/5 105/11  integrated [2] 17/3 44/16  intend [1] 294/6  intention [1] 220/5  intentional [2] 215/14 215/15  intentionally [2] 296/19 298/15  interact [1] 194/9  interacted [1] 263/9  interacting [2] 131/12 131/15  interaction [1] 136/14  interacts [1] 190/4  interchangeably [1] 142/9  interest [2] 173/17 183/24  interested [2] 173/13 176/3  interesting [2] 113/2 176/2  interior [3] 173/9 174/15 198/25  intern [1] 173/1  internal [5] 62/13 62/18 62/19 128/5 128/8  internally [1] 280/23  international [1] 185/25  internationally [1] 185/21  internships [1] 176/5  interpret [2] 180/19 181/6  interpretation [2] 6/24 308/23  interrogated [1] 243/16  interrogatories [4] 166/3 167/4 167/9 167/10  interrogatory [7] 10/22 10/23 11/2 11/4 13/6 158/24 164/10  interrupting [1] 55/3  intervention [1] 237/11  interventions [2] 184/9 229/6  into [88] 6/13 23/15 24/25 28/7 28/9 30/15 31/6 32/4 33/6 34/11 35/24 44/16 48/14 60/25 65/18 72/4 75/22 76/11 81/1 105/11 106/21 110/2</p>	<p>112/18 113/3 113/6 116/13 118/8 118/10 121/2 122/5 124/23 125/16 128/9 130/25 133/1 133/10 134/18 139/4 139/14 143/9 143/18 143/20 144/7 144/20 145/8 146/11 152/18 161/3 166/1 171/23 171/24 172/13 172/18 177/23 178/4 179/21 181/22 189/17 192/24 192/25 194/17 194/20 194/22 195/11 196/17 198/4 198/4 198/7 198/7 201/12 206/11 207/25 210/22 216/14 222/17 222/24 224/17 228/10 228/15 238/11 240/15 256/6 262/6 269/24 277/22 277/23 287/2 287/7  introduced [1] 46/17  intubate [1] 229/2  inverted [1] 81/3  invest [1] 12/10  investigate [1] 240/14  investigating [1] 115/8  investigation [3] 163/1 166/8 289/12  investigations [1] 177/12  investigators [2] 285/17 285/22  invoicing [1] 160/14  involuntary [2] 250/16 250/24  involve [1] 122/22  involved [19] 6/9 13/22 52/15 73/16 95/14 112/21 112/23 114/4 116/7 118/5 118/14 118/18 119/24 121/13 167/6 173/23 174/24 189/6 271/23  involvement [2] 116/5 118/3  involving [1] 6/11  IP [1] 261/2  irrelevant [2] 9/7 295/21  is [1044]  isn't [113] 14/24 15/3 28/6 33/12 40/23 46/23 64/25 134/23 231/19 231/23 231/25 232/5 232/5 232/24 233/4 233/6 233/25 234/3 234/6 234/13 234/20 235/10 235/14 236/5 236/8 236/12 236/16 237/17 242/4 242/8 242/21 243/10 243/18 244/11 244/17 244/22 245/3 245/6 245/14 245/18 245/25 246/3 246/6 246/9 246/13 246/18 246/23 247/2 247/12 248/2 248/11 248/14 251/2 251/17 252/6 252/10 252/13 252/16 252/20 253/1 257/5 257/12 257/18 257/25 258/4 258/12 258/16 261/19 263/7 263/17 264/3 264/18 264/23 264/25 265/2 265/4 266/6 266/12 266/21 266/25 267/5 267/10 267/15 267/18 268/2 268/5 268/20 268/24 269/1 269/4 270/8 270/20 270/24 271/17 271/23 273/15 273/17 273/20 274/2 274/6 274/24 275/2 275/13 275/18 276/2 276/15 276/18 277/5 277/18 278/8 282/18 283/5 283/15  isolated [1] 108/7  issue [19] 4/15 6/5 7/14 41/14 79/25 80/5 80/24 85/13 109/7 121/18 128/1 135/7 228/24 235/18 266/24 270/4 290/11 292/2 294/23  issues [9] 80/3 85/25 114/4 212/25 236/23 237/3 290/6 290/19 290/19  it [952]  it' [2] 114/8 145/19  it's [291] 5/2 5/5 6/7 6/16 7/9 7/13 8/3 8/3 8/21 8/21 8/22 10/11 10/13 10/20 12/10 13/12 14/17 16/12 16/17 16/20</p>
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<p><b>I</b></p> <p>Case 4:23-cv-00088-CDL Document 383 Filed 03/21/25 Page 337 of 362</p> <p>it's... [271] 17/3 20/16 20/17 21/4 21/4 22/10 26/2 27/9 28/18 29/6 29/11 29/17 30/9 30/25 30/25 31/8 31/9 31/9 32/3 34/11 35/3 35/6 35/14 36/2 37/21 38/9 38/22 39/25 40/19 40/20 41/14 41/25 43/20 44/17 46/1 47/3 47/11 47/11 48/13 48/23 49/24 50/1 50/3 50/3 50/9 50/11 50/13 52/5 53/23 54/1 54/4 54/4 57/17 57/17 62/9 63/21 63/22 64/18 64/19 64/23 65/7 65/15 65/16 65/25 66/14 68/4 68/6 69/8 71/2 71/11 71/23 72/2 72/13 73/12 73/20 75/20 77/21 78/12 78/21 79/3 79/23 80/20 82/14 89/7 89/13 90/5 90/13 93/23 93/25 94/1 94/1 94/4 97/24 100/7 101/6 101/21 101/22 101/24 102/9 102/23 105/3 106/11 109/19 111/9 114/17 116/12 117/9 118/9 118/17 118/17 119/2 119/13 120/1 120/1 120/16 120/17 121/11 121/13 122/1 122/3 122/4 122/7 122/8 123/7 124/22 125/6 125/7 128/22 128/22 130/3 130/18 131/6 133/5 133/25 134/1 134/8 134/11 136/2 136/17 138/7 139/10 139/12 140/25 142/19 142/20 143/2 143/7 144/11 145/12 145/22 146/15 147/12 148/6 150/24 152/14 155/16 160/11 160/13 160/18 161/17 161/20 161/20 162/24 164/9 164/9 165/5 165/7 165/8 166/25 167/1 175/16 179/11 181/21 182/25 183/2 184/10 185/18 189/11 191/6 191/8 192/17 193/6 193/13 193/20 196/10 200/8 200/15 205/6 205/11 206/5 206/18 207/1 207/2 209/1 209/1 209/24 209/25 210/5 210/13 214/4 215/21 216/7 216/9 217/6 219/22 219/22 219/24 220/7 224/18 225/12 225/13 225/17 225/19 225/25 227/7 228/11 228/12 228/15 228/22 229/6 231/20 240/24 240/25 241/24 242/2 242/15 242/15 247/7 250/1 254/9 256/8 256/24 259/9 259/14 261/16 262/13 262/19 262/20 262/20 263/4 265/3 267/2 270/1 270/2 270/13 271/2 272/6 272/6 273/16 274/2 274/22 280/19 281/2 287/3 293/8 295/9 295/11 295/22 296/20 298/13 301/7 301/23 301/24 302/6 303/1 303/2 303/2 306/21 307/4 308/20 309/21</p> <p>item [1] 301/6</p> <p>iterate [1] 124/7</p> <p>iterative [1] 120/17</p> <p>its [38] 15/10 15/11 15/14 15/17 16/20 16/22 18/18 18/22 56/18 58/2 64/5 65/24 70/23 70/23 71/1 75/21 76/13 78/9 92/11 102/14 110/5 118/22 124/6 142/18 145/11 145/22 146/17 147/5 165/23 183/1 194/25 206/2 227/10 241/24 246/18 289/22 290/3 290/25</p> <p>itself [8] 6/6 28/7 28/11 28/15 92/12 132/9 142/14 190/20</p>	<p>January [1] 159/10</p> <p>JASON [4] 3/11 284/1 284/2 284/13</p> <p>Jeff [4] 88/6 89/17 116/12 140/4</p> <p>JIM [2] 1/21 8/7</p> <p>JOAN [4] 2/14 2/15 312/3 312/18</p> <p>job [11] 112/6 112/14 112/18 113/17 124/17 124/19 125/1 125/2 180/9 245/8 245/11</p> <p>joined [1] 31/6</p> <p>joins [1] 66/16</p> <p>jostled [1] 146/5</p> <p>JR [1] 1/20</p> <p>JUDGE [7] 1/10 8/15 8/15 15/9 15/22 255/13 310/14</p> <p>judging [1] 220/3</p> <p>judgment [13] 4/10 51/22 51/25 52/6 52/10 53/1 237/20 237/21 289/22 289/24 290/11 290/25 308/18</p> <p>judgments [2] 237/23 237/24</p> <p>Judicial [1] 312/10</p> <p>judicio [1] 7/9</p> <p>July [3] 247/15 256/1 256/17</p> <p>jump [1] 60/11</p> <p>June [5] 48/18 48/19 48/20 159/8 159/11</p> <p>juries [1] 114/1</p> <p>jury [127] 1/9 4/7 5/2 7/11 9/6 10/20 11/7 11/16 13/25 18/1 19/20 20/7 21/16 25/11 28/22 31/21 36/1 39/23 41/9 42/14 45/24 46/4 48/10 63/2 77/9 89/20 90/20 94/19 97/10 97/22 98/2 109/24 110/3 110/4 110/16 114/24 115/21 116/1 116/16 117/21 119/6 120/14 122/24 126/21 127/19 128/24 129/20 130/5 130/25 132/15 133/1 133/23 134/14 135/25 136/24 137/12 138/4 140/3 141/16 141/23 141/24 145/20 146/16 147/23 148/11 151/18 152/15 164/4 164/18 164/24 168/14 190/12 195/20 203/4 204/8 209/12 210/9 211/18 211/21 213/6 213/9 217/23 224/24 231/16 232/13 235/1 235/6 236/21 238/12 240/16 241/8 242/24 247/5 251/25 252/12 253/13 253/25 254/3 254/17 255/7 255/12 255/18 259/25 263/14 267/21 270/21 275/3 287/8 287/9 287/17 287/18 289/16 290/22 291/12 294/20 294/23 295/7 298/8 299/17 299/25 303/16 304/17 305/4 307/3 307/5 310/11 310/13</p> <p>jury's [2] 71/23 304/21</p> <p>Jus [1] 248/19</p> <p>just [199] 7/9 8/9 8/15 8/16 9/5 9/10 9/18 10/12 12/3 20/23 21/2 25/2 25/14 27/4 29/9 29/11 30/6 30/9 31/7 39/7 40/10 40/18 40/20 41/8 44/15 44/17 45/24 46/2 48/10 48/16 52/3 53/2 55/7 55/23 57/11 59/24 61/21 63/8 64/23 68/9 72/22 73/23 75/6 75/10 82/23 89/21 90/3 90/5 92/20 96/3 100/21 102/24 103/7 105/10 106/2 106/10 106/18 108/7 109/11 110/1 113/8 113/9 116/22 118/12 122/13 123/10 124/12 126/14 129/19 130/24 131/3 131/17 131/18 132/2 132/4 132/13 132/15 133/22 134/7 134/7 135/16 135/22 136/1 136/2 140/4 141/13 143/7 146/3 149/9 149/24 150/22 152/13 155/15 156/13 157/22 158/17</p>	<p>159/17 160/6 160/7 163/2 163/5 163/15 164/18 165/24 166/4 167/10 167/25 170/14 172/17 174/15 176/17 181/8 181/12 190/13 191/9 191/19 192/5 193/7 193/8 193/15 193/19 194/20 197/16 199/14 202/24 203/19 204/14 204/17 205/13 206/22 206/25 207/2 209/16 210/9 211/18 211/22 214/10 215/11 215/11 215/16 216/4 216/25 218/5 219/23 221/7 224/3 224/10 224/11 225/19 225/22 226/23 226/24 227/13 228/6 228/7 228/18 229/2 229/7 229/15 230/17 230/24 231/3 233/15 234/7 235/1 235/6 235/9 238/4 238/24 241/7 244/3 246/14 254/17 254/18 256/10 258/8 268/17 270/8 272/20 280/25 281/23 284/9 287/3 288/15 289/3 293/20 295/11 296/20 300/2 300/10 301/8 301/12 302/4 302/23 303/3 303/20 305/18 309/15 310/2</p> <p>justification [1] 292/8</p> <p>Juvenile [10] 233/11 233/23 234/1 234/3 234/6 234/13 234/18 235/15 236/7 249/14</p> <hr/> <p><b>K</b></p> <p>Kao [2] 4/16 5/15</p> <p>keep [18] 14/16 21/20 21/20 85/16 145/6 148/21 148/22 149/2 149/4 150/1 194/6 215/11 215/12 218/14 228/12 238/18 242/11 242/24</p> <p>keeping [3] 85/14 209/4 228/23</p> <p>keeps [5] 27/6 218/11 218/14 219/13 306/13</p> <p>kept [6] 60/21 85/17 126/9 126/12 192/5 241/2</p> <p>KEY [1] 1/25</p> <p>kidney [1] 214/3</p> <p>kidneys [2] 214/14 220/9</p> <p>kill [2] 217/5 229/23</p> <p>killed [4] 12/20 217/8 221/6 249/17</p> <p>kills [1] 216/21</p> <p>kind [31] 14/11 28/14 63/7 68/9 71/2 80/16 82/12 84/20 112/23 113/20 167/25 169/9 177/19 181/21 182/9 183/21 184/15 185/7 197/5 203/10 206/22 207/23 208/18 210/2 213/20 217/21 222/8 227/14 228/5 229/3 238/12</p> <p>kinds [4] 73/24 79/17 86/15 181/24</p> <p>kinematics [10] 79/3 169/22 188/1 190/6 195/9 195/11 207/12 257/9 257/15 297/9</p> <p>kinetic [1] 194/24</p> <p>knee [3] 144/9 144/10 173/19</p> <p>knees [1] 144/15</p> <p>knew [5] 177/19 276/7 285/24 294/11 309/7</p> <p>know [177] 6/8 8/18 11/1 13/17 14/2 14/24 15/1 15/2 15/21 21/3 21/9 23/8 23/16 24/15 25/13 25/14 26/8 26/11 26/12 27/5 33/18 35/5 35/5 37/6 39/5 40/19 41/14 42/15 42/19 42/24 43/19 44/5 44/17 48/1 48/23 49/3 50/23 53/16 54/22 57/1 57/14 57/15 57/20 57/21 59/5 60/14 60/23 61/3 61/22 67/4 69/14 69/15 70/11 70/25 71/18 72/17 73/3 73/18 73/19 73/20 74/9 74/11 75/10 79/14 79/21 80/5 80/6</p>
<p><b>J</b></p> <p>jacket [1] 141/9</p> <p>Jacob [1] 251/24</p> <p>JAMES [1] 1/20</p> <p>Jamie [1] 265/20</p> <p>jamming [1] 222/24</p>		

<p><b>K</b> Case 4:23-cv-00088-CDL Document 333 Filed 03/21/25 Page 338 of 362</p> <p>know... [110] 81/15 81/16 82/22 87/23 91/8 95/8 96/10 96/15 99/22 101/5 102/8 102/9 104/19 106/18 108/6 115/5 115/20 115/24 116/3 118/1 128/20 135/25 138/8 138/9 139/3 140/10 140/13 143/13 151/3 154/4 154/8 156/6 157/3 157/17 158/15 158/16 158/22 162/10 164/15 165/10 177/23 184/8 184/10 186/15 190/17 194/18 197/23 198/1 199/7 214/9 215/5 216/3 219/14 219/15 221/8 226/24 231/3 232/9 233/8 235/21 244/2 249/24 250/2 250/5 250/6 250/10 250/21 251/5 252/22 252/24 253/3 254/12 254/12 260/14 266/3 266/4 266/4 266/8 268/4 268/7 269/2 270/19 272/15 273/3 276/9 276/10 276/11 276/12 277/14 278/18 279/24 280/10 280/18 282/22 282/23 289/3 290/18 291/16 292/9 292/12 292/17 293/4 294/17 297/14 301/7 301/12 302/18 303/17 304/25 306/18 knowing [3] 43/9 55/16 201/11 knowledge [7] 6/1 26/4 72/10 73/5 99/14 103/14 248/1 knows [5] 109/24 160/19 167/7 236/7 273/3 Krishnaswami [2] 42/15 43/8</p>	<p>156/1 156/7 208/25 latitude [1] 123/12 laughing [1] 62/8 launch [1] 215/16 launched [1] 190/20 launching [2] 277/22 293/5 law [26] 4/10 56/21 71/16 146/21 146/22 238/11 240/15 245/3 245/12 288/6 289/22 289/24 290/24 290/25 291/3 291/24 291/25 292/6 293/8 301/13 301/20 303/22 305/19 305/24 308/6 309/10 laws [2] 80/19 83/12 lawsuit [7] 6/11 14/17 166/7 166/17 232/8 248/3 279/15 lawsuits [1] 236/6 lawyer [9] 6/8 52/20 114/9 231/15 237/25 247/9 263/15 278/6 283/6 lawyer's [1] 254/24 lawyers [32] 16/3 33/20 109/13 114/3 114/7 115/1 115/4 115/19 115/21 149/17 162/5 162/5 162/6 166/12 187/8 189/7 189/13 189/21 210/20 232/3 238/5 238/18 247/8 247/18 247/21 247/23 247/25 272/9 283/6 285/17 285/22 288/2 lay [3] 40/3 40/4 121/4 layed [1] 94/6 layer [2] 247/4 278/2 layered [1] 155/25 laying [2] 145/12 267/20 layout [1] 121/7 laypeople [1] 47/5 layperson [1] 40/18 lead [2] 293/25 300/21 leader [1] 113/18 leading [3] 147/12 184/16 292/23 leads [2] 78/18 108/18 learn [2] 115/12 115/12 learned [1] 81/7 learning [1] 120/18 least [10] 5/15 13/12 48/25 59/3 59/5 100/3 103/12 114/17 161/16 306/8 leave [18] 10/15 10/17 64/15 65/25 102/24 133/16 133/19 156/3 281/22 288/19 300/11 300/12 300/16 300/18 300/19 307/9 309/4 310/2 LEC [3] 189/10 189/11 278/2 LECs [3] 114/24 189/6 189/21 lectured [1] 185/21 led [6] 229/12 229/16 229/20 237/3 281/22 297/21 left [33] 12/4 17/13 22/12 22/16 22/21 22/21 30/10 48/3 48/13 65/12 71/23 89/23 112/4 118/5 134/6 135/9 135/10 136/15 158/17 161/10 190/18 191/21 192/3 200/16 200/25 201/3 208/4 210/13 210/14 210/15 215/1 225/17 295/8 left-hand [5] 89/23 190/18 191/21 192/3 200/16 legal [9] 6/9 14/17 125/3 179/17 189/6 189/12 265/6 290/18 292/20 legs [1] 144/13 length [1] 29/19 LENOX [1] 1/15 less [16] 19/1 34/25 40/23 85/8 85/9 160/11 191/1 195/7 207/8 217/6 233/16 234/11 238/9 250/1 271/18 271/19</p>	<p>let [38] 8/14 14/24 15/22 18/17 27/5 28/21 68/25 71/8 91/8 92/25 93/16 94/18 101/12 104/13 109/11 109/13 116/16 123/14 128/20 145/23 145/24 148/10 154/23 162/25 165/10 195/18 197/4 204/10 232/15 236/19 238/16 242/1 247/12 257/5 288/13 289/10 292/14 306/25 let's [61] 9/8 9/10 10/20 10/21 15/5 21/16 23/21 27/16 27/21 30/6 30/21 32/2 36/13 38/9 39/7 39/7 40/9 41/19 42/2 45/5 45/15 60/10 61/18 64/8 67/18 69/8 74/22 75/13 76/4 76/11 81/24 88/18 92/16 100/5 100/21 101/1 102/12 102/17 102/23 109/21 117/3 120/9 123/14 126/14 132/15 150/9 152/15 155/21 157/5 159/6 162/24 170/15 186/11 193/23 196/18 205/17 206/25 255/5 300/2 300/6 302/6 letting [1] 218/25 leukemia [1] 225/7 level [25] 20/24 57/24 59/15 62/12 97/10 131/22 131/25 132/1 132/6 134/18 137/9 160/13 180/2 184/21 184/22 185/2 202/11 203/15 203/20 203/22 207/1 214/23 226/22 304/19 304/20 leveled [1] 184/15 levels [4] 76/17 184/3 213/23 228/13 Lewis [7] 132/16 134/14 134/25 135/3 199/19 202/5 202/25 Lewis's [4] 200/1 201/16 201/25 204/23 liability [5] 232/8 233/1 236/6 246/25 248/9 liability-related [1] 248/9 license [2] 186/16 186/19 licensed [1] 264/20 licenses [1] 186/20 life [8] 18/8 91/23 221/3 222/8 229/2 234/16 237/15 237/16 ligaments [2] 196/12 196/13 light [6] 58/3 87/5 100/10 207/11 253/6 295/2 lightbulb [1] 240/13 lightened [1] 198/24 lighter [4] 75/24 78/5 78/7 100/15 like [147] 14/10 15/2 16/13 21/23 22/10 23/10 29/13 29/20 29/22 30/5 30/19 32/15 33/25 35/2 36/22 38/9 41/7 41/20 44/17 47/10 50/13 51/11 51/18 63/2 67/16 67/16 69/12 69/18 72/21 74/18 79/22 82/4 82/16 82/19 92/4 92/7 92/8 95/4 102/14 102/16 103/5 111/12 114/1 114/3 114/9 114/19 115/4 120/10 120/12 121/8 121/19 121/20 121/24 122/1 123/11 124/5 124/12 129/19 130/24 132/7 132/25 134/11 135/10 135/18 136/17 167/19 171/24 174/16 175/15 180/9 181/24 182/21 182/23 182/23 183/12 184/8 184/17 188/19 190/8 191/7 192/20 193/8 194/18 194/19 194/20 196/19 196/20 196/21 197/12 198/5 203/1 203/19 205/4 205/15 205/16 206/22 206/23 206/24 208/18 208/18 210/15 213/18 214/13 215/8 215/10 217/1 217/19 218/9 219/14 220/4 220/4 220/10 220/18 221/18 221/25 222/2 222/7 222/8 222/11 223/10 225/21</p>
<p><b>L</b></p> <p>lab [4] 144/4 178/16 193/8 235/24 label [1] 286/25 labeled [1] 34/1 labs [1] 246/22 lac [3] 225/13 225/13 225/14 laceration [4] 213/19 214/6 214/7 267/24 lack [8] 4/11 84/11 170/18 170/20 171/14 276/5 291/4 292/11 ladies [6] 11/17 105/17 162/22 165/22 284/3 287/24 Lake [1] 178/18 lamp [2] 110/7 168/6 land [5] 1/9 15/9 15/22 65/4 301/20 landed [2] 116/24 299/5 landing [1] 64/18 lands [1] 191/3 language [7] 9/5 9/11 293/18 301/13 302/4 307/25 309/25 lap [5] 133/11 134/20 150/13 153/8 155/5 LARAE [1] 1/16 large [4] 38/8 57/25 177/25 235/11 larger [4] 81/24 85/6 218/3 218/3 last [33] 23/6 40/9 83/18 106/3 116/24 117/1 124/16 165/1 176/24 197/18 250/3 251/25 279/22 286/6 292/4 296/18 302/16 306/17 306/18 306/21 306/21 307/10 307/14 307/19 307/20 307/25 308/4 308/8 309/4 309/9 309/21 310/8 311/7 last-minute [1] 302/16 lasts [1] 113/8 latch [9] 132/17 132/19 132/21 133/7 134/15 134/24 135/4 136/8 152/15 late [4] 36/16 105/10 162/23 288/1 later [7] 55/1 126/13 145/13 178/6 183/17 259/12 288/12 lateral [7] 92/5 140/22 142/3 142/4</p>		

<p>L like... [26] 227/5 227/15 228/15 228/21 229/15 230/9 235/9 236/21 243/13 244/7 250/14 251/3 252/2 253/8 262/3 264/12 277/23 280/23 281/18 281/20 286/9 288/12 288/22 292/25 293/12 304/12</p> <p>likely [8] 5/24 8/5 32/3 64/23 85/6 182/3 212/10 309/7</p> <p>limit [3] 105/18 145/11 219/25</p> <p>limiter [4] 143/5 143/6 143/18 145/5</p> <p>limits [2] 109/12 109/21</p> <p>line [24] 10/15 10/17 20/18 20/19 20/22 22/20 22/21 23/14 31/3 34/2 34/24 34/25 35/11 76/5 125/7 210/16 239/2 239/6 261/20 262/17 272/17 280/13 280/17 287/3</p> <p>lines [6] 43/4 70/1 90/16 267/9 278/13 294/4</p> <p>lines 10 [1] 278/13</p> <p>list [14] 8/22 10/16 10/17 106/6 106/14 106/14 107/2 108/14 117/7 119/1 139/13 233/9 233/18 258/20</p> <p>listed [5] 106/13 116/9 116/10 119/19 275/6</p> <p>listen [3] 189/17 242/19 242/20</p> <p>listened [1] 285/16</p> <p>listening [1] 254/20</p> <p>lists [1] 106/4</p> <p>literature [7] 153/7 153/18 185/14 211/14 240/17 240/18 240/19</p> <p>liters [1] 228/15</p> <p>litigation [6] 106/20 159/13 162/2 162/8 162/16 279/13</p> <p>little [53] 50/8 57/5 59/24 70/18 71/24 105/18 111/16 117/18 118/10 120/21 124/24 134/8 134/10 141/11 141/13 141/14 160/25 163/21 172/3 172/23 174/2 193/9 196/3 196/12 197/2 197/11 198/24 202/8 205/6 205/6 206/10 210/5 210/5 210/16 219/1 220/23 222/3 222/18 225/8 225/11 226/18 227/19 227/20 227/20 230/22 233/16 234/23 238/22 240/15 271/19 302/24 306/2 307/24</p> <p>live [5] 111/1 111/2 179/25 231/19 244/11</p> <p>liver [8] 208/7 208/9 208/9 208/10 208/10 214/3 214/6 214/7</p> <p>livers [1] 214/14</p> <p>lives [2] 84/23 184/10</p> <p>living [1] 169/4</p> <p>LMOORE [1] 1/17</p> <p>load [26] 59/19 59/21 60/5 64/5 141/11 141/12 141/13 143/5 143/6 143/14 143/18 144/4 145/5 146/6 146/8 146/14 153/17 153/21 174/13 196/21 198/6 198/8 208/21 208/25 209/3 225/11</p> <p>loaded [11] 88/21 133/20 133/21 134/5 134/13 145/2 145/15 150/13 197/16 198/4 198/9</p> <p>loading [18] 59/21 59/23 60/9 68/16 68/18 134/2 134/21 136/13 142/3 144/16 145/3 145/7 146/14 194/10 198/4 208/3 208/17 209/8</p> <p>loads [13] 60/4 141/15 143/3 143/8 143/11 143/12 144/5 145/6 145/16 183/21 196/22 208/8 208/10</p> <p>local [3] 179/3 179/18 186/1</p>	<p>location [2] 15/20 65/9</p> <p>lock [6] 146/1 146/7 146/14 148/20 148/22 148/24</p> <p>locked [4] 74/21 143/8 146/4 146/13</p> <p>locking [1] 146/15</p> <p>locks [1] 141/2</p> <p>log [2] 256/3 256/9</p> <p>long [13] 8/22 43/24 106/20 111/6 111/15 113/15 121/1 130/19 163/15 174/3 213/18 288/9 288/10</p> <p>longer [7] 4/12 76/5 194/7 223/24 251/19 255/2 291/2</p> <p>looming [1] 152/3</p> <p>look [105] 11/14 19/4 19/6 25/24 25/24 27/23 30/19 31/9 31/21 35/3 35/17 35/24 36/4 38/8 41/16 41/22 41/23 45/21 48/3 48/17 73/23 74/12 74/22 75/10 76/1 79/3 100/5 100/18 102/12 102/17 106/21 116/16 121/8 124/12 126/12 130/19 131/9 133/13 134/11 136/12 137/9 140/10 147/7 153/3 167/21 171/11 178/6 182/12 182/13 182/15 182/15 182/16 183/14 184/4 185/17 185/24 190/2 190/5 190/8 195/22 196/20 196/21 199/11 199/14 199/16 208/22 210/1 210/2 210/4 210/16 211/4 211/5 211/5 214/8 215/4 215/10 218/13 219/10 221/5 221/24 221/25 222/25 223/7 225/17 225/18 232/4 233/8 233/9 233/17 233/20 236/14 237/6 238/3 241/2 242/14 253/19 253/20 274/11 275/5 275/11 282/4 282/5 286/9 290/6 304/8</p> <p>looked [50] 7/10 13/6 18/17 18/18 19/5 21/23 24/21 33/2 33/7 33/25 53/2 53/15 78/22 82/19 94/12 97/18 99/23 102/14 103/5 118/25 132/3 150/21 177/25 187/25 187/25 188/1 188/6 188/6 188/8 188/10 188/19 197/24 198/19 205/14 207/11 213/15 214/23 218/16 221/21 223/19 223/21 223/22 240/19 241/20 266/14 266/16 273/4 276/10 280/22 281/24</p> <p>looking [51] 16/10 16/11 19/16 21/9 22/13 22/24 23/9 23/10 26/19 26/20 28/23 35/22 38/11 39/14 40/16 40/20 45/21 84/21 87/2 93/3 93/21 93/25 96/20 101/17 104/9 132/7 134/2 134/11 135/14 136/11 138/10 140/6 147/12 153/16 158/21 180/24 195/24 200/7 203/1 206/23 209/19 209/20 210/11 213/17 218/11 218/12 241/3 281/25 282/8 306/13 308/23</p> <p>looks [16] 7/11 22/10 23/10 35/2 41/20 50/13 51/11 69/12 82/4 82/15 97/13 97/15 102/16 124/5 210/14 253/8</p> <p>loose [3] 141/8 145/12 148/18</p> <p>lose [2] 218/18 221/4</p> <p>loses [1] 191/6</p> <p>loss [1] 294/11</p> <p>lost [2] 194/23 216/13</p> <p>lot [44] 67/20 109/24 114/6 114/11 114/24 121/5 121/12 121/21 121/25 122/15 122/17 123/4 123/5 125/4 128/24 132/3 143/15 174/18 176/2 176/23 178/16 180/15 182/14 183/9 185/19 189/20 194/23 197/7 213/23 214/12 217/16 217/24 220/4 220/19 226/13 230/14 230/15 246/21 246/22 248/17 248/18 248/23 251/11 306/7</p>	<p>lots [3] 189/23 234/7 244/6</p> <p>low [4] 146/19 206/7 206/8 226/22</p> <p>lower [15] 22/22 23/16 23/17 58/20 64/2 64/4 64/7 73/20 141/21 144/11 173/20 206/12 207/22 208/4 271/3</p> <p>lowered [1] 44/10</p> <p>lowering [2] 90/25 143/3</p> <p>Lowery [6] 11/20 88/11 88/23 90/15 95/13 292/14</p> <p>lowest [2] 57/23 59/1</p> <p>Lowrey [4] 76/4 85/25 95/5 149/16</p> <p>Lowrey's [1] 270/6</p> <p>lucky [1] 177/20</p> <p>lunch [13] 10/4 162/24 163/2 163/3 163/25 288/18 288/20 288/21 288/22 288/23 289/4 289/5 289/6</p> <p>lunches [1] 162/23</p> <p>lunchtime [1] 288/17</p> <p>lungs [4] 228/3 230/22 230/25 231/2</p> <p>lying [6] 15/14 18/20 20/11 23/18 38/9 38/10</p> <hr/> <p>M</p> <p>M-A-R-K [1] 168/17</p> <p>ma'am [3] 11/19 72/17 105/17</p> <p>machine [1] 124/15</p> <p>made [26] 4/16 9/16 10/18 16/24 36/18 36/20 51/14 52/6 68/22 71/4 81/19 107/12 123/24 132/8 136/9 136/20 152/21 164/25 166/2 166/18 200/18 204/18 216/2 303/13 307/14 309/1</p> <p>magnitude [3] 55/19 56/14 57/2</p> <p>Mahmood [3] 69/15 70/12 70/15</p> <p>mailed [1] 286/25</p> <p>mainly [7] 115/19 121/7 130/14 140/8 141/21 143/12 288/18</p> <p>maintain [1] 85/7</p> <p>major [6] 28/20 111/10 213/20 263/11 263/12 267/25</p> <p>make [68] 6/2 6/6 7/6 8/5 10/4 10/6 12/9 12/13 17/15 19/5 26/16 26/17 30/14 38/8 49/24 50/4 53/18 53/20 55/25 61/17 62/5 65/3 79/15 81/20 81/24 102/25 105/1 105/7 107/25 112/25 125/8 125/10 127/12 136/4 139/13 154/21 154/23 163/5 163/19 164/19 165/24 166/14 174/3 175/16 178/5 181/25 182/2 182/23 186/17 186/19 199/3 211/6 220/9 226/5 226/6 226/6 227/11 230/17 235/24 237/24 238/23 245/13 251/6 292/19 299/15 302/6 310/14 310/20</p> <p>makes [19] 5/23 5/24 12/8 12/12 50/9 97/14 99/10 104/7 193/3 215/20 216/8 225/7 225/21 225/24 231/4 261/19 292/6 296/3 304/13</p> <p>making [20] 56/4 83/24 84/7 84/10 84/16 85/11 104/14 113/7 197/22 204/11 237/20 237/21 237/22 250/19 275/14 288/12 298/5 300/7 300/8 308/17</p> <p>male [4] 272/3 272/5 273/13 281/2</p> <p>MALEK [15] 2/8 5/25 8/12 8/18 44/18 53/22 60/20 60/23 61/1 61/6 85/21 101/9 102/19 105/15 107/21</p> <p>man [6] 42/15 112/16 113/3 238/10 252/20 272/7</p> <p>management [2] 45/9 54/7</p> <p>manner [6] 124/13 179/14 179/19 179/22 186/25 293/13</p>
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<p>M  manufacture [3] 14/16 100/2 232/7  manufacturer [6] 37/2 135/1 232/2  233/1 237/17 248/15  manufacturer's [1] 305/17  manufacturers [4] 13/23 97/22 98/11  249/9  manufactures [1] 234/3  manufacturing [2] 83/8 125/11  many [35] 7/1 9/16 13/22 62/9 91/2  91/11 94/23 96/13 104/21 114/16  114/18 117/9 117/13 118/14 118/17  118/19 120/10 128/18 129/11 155/13  158/13 159/24 186/7 228/7 228/18  230/15 237/23 249/23 249/24 252/22  252/24 254/10 264/14 277/19 279/22  March [3] 233/15 233/22 312/13  mark [8] 3/6 168/4 168/5 168/16  168/20 226/3 234/23 278/12  marked [3] 107/20 108/16 191/22  market [1] 122/1  marketing [3] 121/14 122/6 122/8  marking [2] 89/20 90/3  marks [27] 132/17 132/18 132/21  133/7 133/20 134/3 134/14 135/3  135/10 135/11 135/14 136/8 136/9  136/20 137/14 137/17 137/24 146/14  152/22 152/24 153/9 153/17 153/21  154/5 154/11 154/15 155/6  mass [2] 75/4 194/25  massive [5] 216/21 227/15 293/10  294/22 295/7  master [1] 173/10  master's [1] 172/6  masters [3] 112/1 112/6 173/9  material [6] 104/5 105/4 164/11 214/15  258/10 258/20  materially [2] 46/8 301/18  materials [5] 37/14 55/20 76/16 76/21  188/3  math [5] 60/16 62/5 62/6 71/11 117/18  mathematically [3] 62/22 70/18 214/11  matter [22] 4/10 6/14 6/14 6/15 6/17  7/9 55/25 56/21 76/13 79/18 106/19  195/6 242/8 242/21 289/8 289/22  289/24 290/24 290/25 291/3 298/20  312/8  matters [5] 4/7 14/14 58/19 109/15  167/6  may [45] 6/6 11/20 30/3 36/13 45/17  59/13 59/20 61/8 70/17 70/21 73/6  84/17 93/1 93/9 110/5 120/6 120/23  124/15 136/15 148/14 166/1 166/2  167/6 168/18 187/1 232/11 233/4  243/5 255/14 255/19 271/19 283/20  286/20 287/25 288/14 289/14 298/4  300/10 301/19 303/8 305/5 305/16  309/5 309/12 309/22  may continue [1] 255/19  maybe [17] 10/11 37/13 82/21 114/20  133/21 155/4 158/8 158/14 159/25  223/20 239/24 240/14 248/7 289/5  293/15 293/16 302/7  MBOORMAN [1] 2/5  me [109] 7/9 7/12 8/14 11/8 11/12  11/13 14/7 14/8 14/24 15/22 18/17  25/25 26/22 27/5 27/16 27/24 28/21  30/22 31/3 32/11 37/10 39/9 41/6  41/16 44/17 44/23 45/7 55/8 59/11  60/17 61/23 68/25 71/4 83/11 91/8</p>	<p>92/25 94/18 101/12 101/14 104/13  107/7 107/14 108/18 109/3 109/4  109/11 112/25 113/10 114/3 114/25  115/14 117/9 123/8 128/19 128/20  135/11 135/24 139/14 148/10 154/23  155/8 159/17 161/1 166/1 176/20  179/10 179/16 180/11 181/6 188/25  192/8 197/4 199/12 199/16 204/10  211/18 215/15 216/9 219/13 227/14  232/15 236/19 238/16 238/24 241/4  242/19 247/12 248/4 248/6 250/15  255/1 257/5 258/25 260/25 262/14  265/23 267/4 267/12 268/1 280/13  280/18 292/14 292/25 294/24 294/25  295/20 298/24 306/18 306/25  MEADY [1] 2/7  mean [37] 6/8 18/1 18/2 30/11 38/10  50/25 56/20 62/5 66/9 79/21 86/10  86/12 91/20 92/7 94/15 96/16 99/18  142/23 147/9 161/22 167/22 167/23  192/4 203/8 211/1 226/10 226/21  238/21 238/23 259/15 261/21 295/6  296/10 303/8 305/25 309/2 310/21  meaning [3] 57/6 142/4 273/10  means [21] 7/11 44/13 47/6 94/4 94/22  104/4 190/6 191/10 218/5 229/5 230/8  240/10 269/5 270/21 271/7 271/10  272/6 293/3 308/15 308/23 308/24  meant [4] 82/21 93/23 113/20 144/14  measure [4] 69/3 71/17 259/20 259/23  measured [2] 64/5 70/9  measurement [1] 225/9  measurements [6] 22/4 22/7 29/25  31/22 33/9 126/11  mechanical [11] 79/20 111/25 112/1  124/2 128/10 143/6 145/25 146/1  172/5 172/6 246/10  mechanically [1] 143/10  medical [66] 41/12 169/7 169/13 170/2  170/24 171/25 172/8 172/9 172/13  172/15 172/19 172/22 175/20 175/22  175/23 175/24 177/1 177/6 177/24  178/1 178/3 178/14 178/17 178/20  179/2 179/3 179/4 179/5 179/8 179/17  179/18 185/13 186/1 186/4 186/7  186/7 186/9 186/24 187/5 188/4 197/5  217/14 217/22 218/12 220/25 223/22  224/5 224/13 226/24 228/24 229/11  230/2 238/3 239/23 247/7 264/14  264/15 265/6 267/3 279/4 279/11  280/5 282/9 282/20 282/21 282/24  medication [1] 217/20  medications [7] 186/10 219/16 219/18  243/22 243/25 244/1 279/8  medicine [11] 119/14 169/6 175/24  175/25 176/1 176/13 180/10 186/8  186/23 230/20 264/20  meet [14] 57/4 57/6 87/8 87/14 87/19  99/7 100/3 125/25 236/9 236/12  236/14 236/16 236/20 253/16  meetings [1] 115/18  meets [2] 125/8 126/10  MELTON [4] 2/2 292/3 301/5 302/15  member [3] 119/4 119/7 119/9  members [2] 17/13 290/15  memories [2] 138/16 138/18  memorized [1] 269/13  memory [2] 4/24 152/2  mention [4] 109/11 217/24 277/12  310/18</p>	<p>mentioned [11] 86/7 86/20 129/3  172/22 177/21 184/2 186/1 201/13  207/11 210/20 231/5  message [1] 295/21  metal [5] 27/1 27/10 56/1 133/17  143/10  method [2] 119/25 259/15  methodology [7] 189/24 190/2 257/14  257/19 258/2 258/14 259/9  metric [1] 76/2  metrics [1] 102/10  MI [3] 180/21 180/23 235/23  Miami [1] 221/20  MICHAEL [2] 2/4 2/6  Michelle [1] 158/15  Michigan [12] 26/9 111/2 172/5 176/11  177/19 244/13 244/14 244/16 244/24  245/12 245/12 246/4  middle [18] 1/1 4/4 39/1 40/13 41/9  41/22 50/6 50/14 82/2 82/9 82/11  83/15 95/17 103/2 103/9 155/8 208/20  312/5  middles [1] 37/23  midline [1] 225/19  might [10] 32/6 54/25 90/17 107/18  109/6 160/12 212/11 217/10 254/20  301/25  Mike [1] 164/10  mild [2] 224/14 274/3  mile [11] 193/13 194/15 194/17 216/11  268/7 268/17 268/21 269/7 270/22  273/12 281/9  mile-per-hour [1] 270/22  miles [11] 111/3 130/10 149/7 188/19  188/22 189/4 190/24 191/2 194/20  271/18 271/19  milestone [1] 124/1  military [1] 111/21  millimeter [1] 206/25  millimeters [3] 49/10 49/21 49/21  million [2] 13/8 160/12  milliseconds [4] 175/9 175/10 175/11  193/24  MILLS [159] 3/11 16/2 16/2 18/4 18/15  19/7 19/14 23/6 23/18 24/21 24/22  25/4 36/14 36/20 36/25 38/5 40/22  40/23 41/4 43/24 44/9 49/2 51/1 67/24  76/12 82/12 105/10 132/18 132/19  138/5 145/15 147/19 149/17 150/10  150/25 151/3 169/17 170/6 170/10  170/15 170/16 171/8 171/10 171/18  171/22 185/6 192/24 193/5 194/3  196/2 196/14 197/9 197/10 197/14  197/15 198/3 202/7 202/9 203/18  205/15 206/11 207/6 207/6 207/7  207/13 207/15 207/17 208/13 215/1  216/7 217/8 217/9 218/8 219/5 221/8  222/14 222/15 223/22 224/4 224/18  224/20 226/8 226/10 226/12 226/17  227/13 227/23 227/24 227/25 228/2  229/19 229/21 230/9 231/6 235/3  235/6 236/2 236/23 237/2 238/10  238/12 238/19 239/13 242/4 242/10  242/23 251/8 251/19 251/25 252/6  252/10 252/13 253/2 253/3 253/14  253/25 254/10 254/20 263/8 263/9  263/18 263/20 267/13 267/16 268/25  271/18 271/24 272/13 272/15 273/1  274/7 274/25 275/7 276/25 277/4  277/6 277/17 277/23 278/7 280/5</p>
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M	Case 4:23-cv-00088-CDL Document 383 Filed 03/21/25 Page 341 of 362	
<p>MILLS... [19] 280/7 281/9 281/21 282/18 282/25 284/1 284/2 284/13 284/18 284/18 284/22 284/24 285/24 286/7 286/16 293/13 295/25 296/2 296/15 Mills' [25] 37/17 37/20 37/24 81/25 103/4 132/21 134/15 197/4 215/19 217/14 220/1 221/1 223/22 224/19 227/7 229/12 236/10 251/17 252/17 253/6 267/6 267/23 272/10 279/11 294/16 Mills's [1] 216/15 mind [3] 53/13 74/8 240/2 minimal [1] 89/6 minimize [1] 226/10 minimum [7] 57/1 57/6 87/3 100/2 125/22 303/21 305/18 minivans [1] 174/4 minor [4] 5/16 126/2 263/10 263/21 minus [1] 187/20 minute [7] 105/19 105/22 121/2 207/13 216/16 216/19 302/16 minutes [19] 25/4 76/6 105/21 216/9 216/10 216/20 216/20 216/20 217/2 217/6 241/18 246/6 255/4 255/8 255/24 277/24 282/6 291/6 291/9 misleading [5] 8/3 200/15 200/19 214/19 263/4 missed [2] 43/17 244/8 misstates [1] 151/16 Missy [2] 114/3 114/25 mistake [3] 275/10 275/14 308/18 mistaken [2] 24/16 53/14 mistakes [1] 61/17 mistook [2] 24/10 24/13 misuse [2] 153/2 153/3 Mitsubishi [1] 97/25 mix [1] 107/6 mode [1] 94/1 model [18] 33/13 36/14 37/21 38/3 46/14 46/16 47/7 47/8 73/23 76/11 78/15 88/3 94/4 94/10 94/19 94/23 101/8 101/16 modeled [2] 94/11 94/14 modeling [3] 47/4 47/6 52/1 modern [1] 156/16 modification [2] 7/19 8/1 modifications [3] 47/21 51/14 104/15 modified [9] 5/6 5/10 5/12 6/18 6/20 54/20 55/16 81/20 301/25 moment [8] 57/1 100/5 110/9 135/22 168/7 191/13 204/2 204/22 moments [1] 141/4 money [8] 12/8 12/9 12/13 57/18 99/7 147/4 289/2 310/15 monitor [1] 243/1 month [4] 112/21 177/10 227/4 279/25 months [5] 112/17 186/16 218/8 241/6 249/22 Monticello [1] 178/18 MOORE [1] 1/16 morbid [2] 217/11 230/19 more [64] 5/24 8/5 8/20 12/8 12/9 12/12 12/13 19/1 30/19 32/3 34/25 36/2 36/5 41/1 44/15 57/7 58/2 58/9 65/16 75/24 76/16 85/6 86/18 99/6 100/13 100/14 108/21 114/7 135/11 141/14 143/2 153/2 160/10 161/1 172/23 177/24 178/3 184/13 195/3</p>	<p>196/8 197/7 198/21 200/7 200/10 202/14 202/15 208/7 210/3 212/8 212/10 214/21 218/10 219/8 225/12 227/20 227/21 228/17 228/23 229/5 238/9 240/15 253/3 273/11 293/17 morgue [2] 179/11 179/12 morning [11] 4/6 11/24 11/25 110/24 110/25 158/16 165/21 288/1 289/15 291/5 311/8 most [7] 117/22 125/23 130/10 146/2 240/23 244/24 271/24 mostly [3] 36/8 111/20 112/9 mother [2] 284/18 284/21 motion [23] 4/10 4/14 31/7 34/14 68/6 107/11 130/15 130/18 130/23 131/10 133/16 133/19 156/1 289/18 289/20 289/22 290/1 290/3 290/7 290/8 290/25 292/5 292/7 motions [1] 156/1 motor [32] 1/6 9/23 92/18 98/13 104/16 111/14 111/15 112/7 125/16 125/18 169/18 180/7 180/11 184/14 186/6 213/8 216/21 232/2 232/3 246/7 247/21 248/23 286/6 289/21 290/3 293/12 295/25 296/12 296/14 303/1 303/2 307/17 Motors [6] 172/25 244/20 245/4 245/9 245/14 249/1 mounted [2] 144/24 145/3 mounts [1] 132/11 move [52] 29/7 29/9 30/14 31/12 32/13 34/24 35/18 36/13 42/2 45/2 45/3 71/8 72/7 76/7 76/11 89/17 89/19 91/20 109/21 112/25 116/13 123/8 129/18 130/25 132/25 144/1 144/15 145/24 157/19 192/20 192/21 193/11 198/23 199/2 206/2 206/16 211/21 216/2 222/11 222/12 222/13 251/12 253/14 253/17 253/24 253/24 254/1 254/4 254/9 256/5 269/23 274/17 moved [17] 15/11 42/1 90/24 107/10 115/14 127/9 161/3 161/11 192/9 200/9 204/7 229/1 244/14 254/6 289/23 295/18 297/10 movement [9] 81/14 187/25 189/18 190/3 190/3 190/10 195/21 281/14 281/15 moves [7] 29/12 79/22 92/18 174/13 182/16 182/17 227/18 movie [1] 252/2 moving [11] 29/6 29/6 29/7 31/13 66/14 124/23 190/5 190/6 192/7 192/24 193/15 MR [126] 1/15 1/18 1/23 2/2 2/4 2/6 2/8 5/24 6/19 8/12 8/18 11/20 18/15 29/24 29/25 33/21 40/1 40/23 43/8 44/18 50/19 56/8 56/8 61/1 61/14 79/16 81/2 82/21 93/6 94/21 95/5 96/16 106/18 106/23 115/24 116/12 120/3 121/1 125/15 128/15 129/9 129/19 130/24 132/16 132/19 132/24 134/7 135/22 140/4 145/18 145/20 146/10 148/10 149/11 149/16 151/3 155/22 164/8 164/9 169/17 169/19 170/6 170/10 171/10 171/18 185/6 192/24 194/3 197/4 198/3 202/24 204/10 207/6 212/23 216/7 222/14 223/21 223/22 224/19 226/8 226/10 227/13 227/22 227/24 227/25 229/12 229/19 229/21 230/9 231/5 253/2 253/3 254/20 255/2</p>	<p>260/4 260/7 260/11 260/23 261/5 262/22 262/24 263/8 263/18 267/4 267/6 267/13 267/16 267/23 270/6 270/6 280/3 280/11 281/9 282/18 282/25 284/2 284/8 286/16 286/21 289/20 294/16 296/2 299/24 300/22 306/13 309/9 Mr. [138] 5/4 5/7 5/25 6/7 7/19 8/6 10/5 19/7 19/14 21/17 21/21 23/2 23/3 23/6 23/18 24/4 24/10 24/13 24/22 33/16 35/11 37/11 37/12 48/23 53/22 59/23 60/20 60/23 61/6 61/19 63/17 63/21 64/8 64/12 64/25 76/4 80/12 81/2 81/18 85/21 85/25 88/11 88/23 90/15 93/5 93/22 93/22 94/6 94/17 95/13 99/10 101/1 101/9 102/18 102/19 103/16 104/7 105/15 107/21 110/24 115/20 116/1 117/5 120/23 123/4 123/12 127/2 127/16 131/9 132/17 134/14 134/25 135/3 135/15 137/3 137/24 138/21 139/25 140/3 140/13 141/24 148/5 159/12 159/19 159/22 162/10 163/16 171/8 171/22 174/22 186/14 189/20 191/13 192/6 197/14 197/15 199/19 200/1 201/16 201/25 202/5 204/19 204/23 207/7 215/5 222/6 224/18 226/12 226/17 228/2 239/5 255/19 256/16 260/20 262/3 263/9 263/20 268/13 272/18 275/7 284/1 284/18 287/20 289/1 289/1 291/6 292/3 292/14 293/2 296/19 300/20 301/5 302/15 302/16 302/22 303/9 306/25 309/15 Mr. and [1] 132/17 Mr. Buchner [2] 115/20 296/19 Mr. Buchner's [2] 93/22 94/17 Mr. Burnett [14] 110/24 117/5 120/23 123/12 127/2 127/16 131/9 135/15 137/3 137/24 138/21 140/13 174/22 189/20 Mr. Burnett's [2] 123/4 268/13 Mr. Butler [8] 163/16 239/5 287/20 291/6 293/2 300/20 303/9 306/25 Mr. Chris [1] 162/10 Mr. Colby [1] 24/4 Mr. Eady [3] 302/16 302/22 309/15 Mr. Eikey [4] 5/7 6/7 8/6 61/19 Mr. Gunn [1] 10/5 Mr. Harrison [2] 222/6 260/20 Mr. Herbst [20] 5/4 7/19 21/21 23/2 23/3 33/16 35/11 37/11 37/12 59/23 80/12 81/2 81/18 93/5 93/22 94/6 99/10 103/16 104/7 116/1 Mr. Herbst's [3] 21/17 63/17 102/18 Mr. Jason [1] 284/1 Mr. Lewis [5] 134/14 134/25 135/3 199/19 202/5 Mr. Lewis's [4] 200/1 201/16 201/25 204/23 Mr. Lowery [5] 88/11 88/23 90/15 95/13 292/14 Mr. Lowrey [2] 76/4 85/25 Mr. Malek [10] 5/25 53/22 60/20 60/23 61/6 85/21 101/9 102/19 105/15 107/21 Mr. Melton [3] 292/3 301/5 302/15 Mr. Mills [18] 19/7 19/14 23/6 23/18 24/22 171/8 171/22 197/14 197/15 207/7 224/18 226/12 226/17 228/2 263/9 263/20 275/7 284/18</p>

M	N	Page 342 of 362
<p>Case 4:23-cv-00088-CDL Document 383 Filed 03/21/25</p> <p>Mr. Musk [1] 289/1  Mr. Prather [4] 204/19 255/19 262/3 272/18  Mr. Roger [3] 159/12 159/19 159/22  Mr. Sal [1] 48/23  Mr. Smith [1] 186/14  Mr. Sochor [1] 256/16  Mr. Swicord [2] 24/10 24/13  Mr. Tandy [5] 64/12 140/3 141/24 192/6 215/5  Mr. Tandy's [7] 63/21 64/8 64/25 101/1 139/25 148/5 191/13  Mr. Trump [1] 289/1  MRI [2] 210/20 277/4  MRIs [1] 211/8  Mrs [88] 40/22 132/18 132/19 132/21 134/15 138/5 145/15 147/19 169/17 169/19 170/6 170/10 170/15 170/16 193/5 194/3 196/2 196/14 197/4 197/9 197/10 202/7 202/9 203/18 205/15 206/11 207/6 207/13 207/15 207/17 208/13 214/25 217/8 217/9 217/14 218/8 219/5 220/1 221/1 221/8 222/15 224/4 224/20 227/7 229/19 230/9 231/5 235/2 235/6 236/2 236/9 236/23 237/2 238/10 238/12 238/18 239/13 242/4 242/10 242/23 251/7 251/17 251/19 251/25 252/6 252/10 252/13 252/17 253/6 253/13 253/25 254/10 268/1 274/7 274/25 276/25 277/4 277/6 277/17 277/23 278/7 279/11 280/5 280/7 281/9 281/21 282/18 282/25  MS [9] 1/13 1/16 1/25 11/19 14/1 24/21 25/4 106/3 296/13  Ms. [2] 283/20 286/25  Ms. Andrews [1] 286/25  Ms. Wright [1] 283/20  much [36] 5/3 25/13 35/5 41/8 47/12 55/20 58/17 76/5 78/5 78/7 86/18 116/7 119/1 144/18 154/20 155/16 160/20 165/1 184/13 187/20 194/18 194/24 194/25 199/16 200/9 205/7 227/14 228/15 255/2 260/10 260/22 277/2 291/8 294/10 303/16 310/15  multiple [11] 24/1 26/14 26/15 83/4 194/7 217/23 252/10 252/21 253/10 255/14 255/15  Musk [1] 289/1  MVCs [2] 180/5 180/6  my [164] 4/24 13/25 25/8 26/1 27/5 27/14 27/22 28/21 31/18 31/20 32/9 38/20 39/5 41/5 43/20 45/11 46/21 50/8 52/4 52/12 53/21 54/4 55/12 59/24 61/18 62/8 63/25 64/17 67/10 70/17 71/4 72/14 73/22 78/25 79/3 79/18 80/11 81/1 85/20 87/1 90/22 105/13 106/11 109/19 110/17 111/21 111/24 112/6 112/6 112/15 112/16 112/17 112/22 112/23 112/25 113/18 114/19 114/20 114/23 115/12 116/7 116/11 116/21 117/19 118/4 119/1 121/7 129/5 136/2 138/14 149/16 150/8 150/20 150/22 158/11 158/12 159/17 161/25 162/13 162/18 163/6 168/16 171/19 172/4 172/11 173/1 173/1 173/3 173/10 173/11 173/24 176/9 177/18 180/25 181/1 181/15 183/23 183/25 184/12 187/12 187/14</p>	<p>189/11 189/12 189/15 190/2 201/6 201/10 201/20 201/20 201/21 202/21 202/23 204/9 204/10 214/5 214/16 215/24 216/18 217/19 218/12 219/14 219/15 221/19 221/24 228/24 229/3 233/8 233/9 233/17 233/19 236/25 236/25 238/4 239/10 240/19 242/17 242/21 243/10 244/25 245/11 245/12 248/1 250/10 256/22 258/22 259/6 259/6 259/6 260/21 260/21 262/19 266/4 274/9 274/11 274/13 275/9 275/10 275/15 276/1 285/11 288/17 297/7 297/8 298/7  myself [3] 115/5 115/16 240/18</p> <p>naked [1] 131/13  name [13] 5/22 46/1 49/3 69/15 69/17 110/16 110/17 135/22 149/16 168/14 168/16 227/4 232/19  named [1] 42/15  narrative [4] 9/11 9/15 9/25 10/1  national [7] 176/15 176/21 176/23 185/24 221/17 235/25 251/16  nationally [1] 185/21  naturally [1] 144/13  navigate [3] 112/17 190/18 192/3  navigating [1] 191/21  NCAP [11] 268/6 268/8 268/9 268/12 268/18 269/8 269/12 269/18 270/17 271/4 281/1  NE [5] 1/15 1/23 2/2 2/4 2/10  near [3] 219/24 231/22 252/8  necessarily [6] 20/20 30/11 65/15 90/24 91/20 305/25  necessary [1] 99/4  neck [6] 79/25 84/17 229/20 274/8 274/25 275/4  necks [1] 80/4  need [45] 4/13 9/22 9/22 9/23 10/16 21/11 45/1 52/8 56/13 74/24 75/1 75/3 76/7 100/18 102/7 102/9 104/22 109/18 109/25 113/11 115/9 116/3 116/19 119/24 125/11 140/4 151/21 162/7 179/13 182/10 185/1 211/21 235/12 238/25 239/24 240/14 250/22 256/23 286/22 290/16 291/5 300/22 303/5 310/20 311/7  needed [2] 163/24 309/2  needs [9] 8/9 71/13 92/2 115/9 122/1 186/18 212/19 287/8 308/20  negative [4] 182/21 182/21 183/10 239/17  negligence [9] 293/7 295/23 296/4 296/13 296/15 296/24 297/6 298/25 299/22  negligent [10] 293/10 294/7 297/5 297/17 298/9 298/9 298/18 299/9 299/11 299/12  negligently [1] 308/18  neighborhood [1] 245/10  nerves [1] 242/15  Network [1] 177/9  neuropathy [1] 220/12  neutral [1] 309/23  never [31] 13/2 23/2 44/21 53/10 57/24 73/24 74/2 74/4 79/5 96/12 104/18 106/13 109/11 113/3 155/1 218/13 235/14 236/2 236/8 236/12 236/16 241/7 245/23 247/24 248/11 248/14</p>	<p>266/12 266/16 266/18 266/21 266/25 nevertheless [1] 5/3  new [10] 120/16 121/22 122/13 178/2 269/17 298/24 306/17 307/23 307/24 311/7  Newton [2] 60/25 61/22  Newtons [2] 60/17 61/21  next [16] 36/24 108/21 109/7 110/5 117/12 124/8 159/6 165/23 168/2 199/11 199/25 210/4 228/5 241/18 283/20 308/20  NHTSA [40] 60/11 60/20 60/21 62/17 63/7 63/10 63/13 67/7 67/18 68/2 68/7 68/25 81/12 83/20 83/24 84/10 84/14 84/16 99/24 100/1 106/10 176/23 177/5 177/6 177/10 249/21 249/23 249/24 250/3 250/6 250/11 250/14 250/16 250/24 251/2 268/9 268/21 269/11 270/17 281/16  NHTSA's [1] 269/17  nice [3] 36/3 36/5 226/25  night [10] 165/1 228/22 292/5 296/18 306/17 306/18 307/14 307/20 308/4 308/8  nine [4] 10/20 286/10 286/15 306/15  nineties [1] 221/20  Nissan [7] 77/2 77/12 86/20 86/22 87/11 97/25 249/5  no [165] 4/12 5/7 10/10 14/16 15/4 15/16 15/19 16/6 20/15 20/20 22/4 23/1 24/6 24/19 26/6 30/9 32/17 33/8 33/9 33/14 33/23 39/12 39/13 40/12 40/14 42/7 43/10 44/7 44/7 44/12 44/13 44/13 44/17 44/19 44/23 45/14 47/25 52/24 58/14 58/20 58/21 61/11 62/9 63/10 63/18 66/13 69/7 70/25 72/18 73/4 73/5 73/11 74/5 74/9 78/19 83/14 90/2 90/9 95/7 98/5 98/16 99/12 103/12 103/12 103/13 105/16 107/11 108/25 112/14 123/23 125/10 125/23 127/11 129/2 131/18 133/4 134/18 138/7 142/25 142/25 147/22 147/22 149/20 150/9 152/2 156/9 157/21 162/20 163/16 171/5 175/7 176/5 194/7 205/21 215/15 217/7 221/17 222/17 223/2 223/2 223/3 229/18 236/4 236/18 237/5 238/6 239/13 239/19 239/21 240/3 240/7 240/12 241/16 242/7 242/9 242/22 243/10 243/11 244/7 247/1 248/1 251/15 264/22 266/11 266/24 269/25 270/5 271/4 271/11 272/2 272/12 273/10 274/21 275/12 277/21 279/18 279/20 280/4 281/11 281/16 281/20 281/24 283/4 283/18 284/20 284/23 286/8 286/19 286/22 287/5 287/7 287/21 287/23 291/2 292/6 292/8 294/13 299/24 300/1 301/3 302/8 304/11 305/2 305/10 305/20  nobody [3] 205/23 215/9 224/2  noisy [1] 124/2  non [5] 85/3 227/3 228/14 240/3 243/24  non-cardia [1] 240/3  non-concerned [1] 243/24  non-ejected [1] 85/3  non-rebreather [2] 227/3 228/14  none [11] 15/19 58/19 139/9 163/7 163/20 163/23 217/3 248/8 248/8 287/11 306/17</p>



<p><b>N</b> Case 4:23-cv-00088-CDL Document 383 Filed 03/21/25 Page 343 of 382</p> <p>nonprofit [1] 57/17  nor [1] 195/15  normal [3] 31/19 219/12 286/12  normally [3] 193/8 237/5 288/13  North [1] 71/20  Northside [1] 265/25  nose [1] 195/24  not [461]  note [1] 77/6  noted [2] 152/8 152/8  nothing [20] 14/19 14/19 44/22 74/8  75/6 98/5 102/22 102/25 110/13 148/2  153/17 168/11 186/18 186/18 215/9  215/12 221/14 300/23 307/23 307/24  notice [1] 288/23  noticeably [1] 153/10  notion [1] 292/5  November [1] 36/21  now [62] 4/5 7/10 7/21 15/6 15/23  16/18 18/17 27/14 30/5 35/17 35/21  36/24 39/14 47/8 49/16 55/7 60/11  62/1 72/20 76/3 92/21 97/2 101/14  102/17 106/7 116/18 124/20 124/23  125/6 127/17 145/12 158/13 158/17  162/23 167/19 175/19 178/10 178/11  189/6 191/10 201/13 203/15 204/18  208/13 212/8 221/8 224/18 227/8  233/19 235/17 241/17 259/17 262/2  263/2 264/10 280/10 289/18 290/3  291/19 299/6 299/10 309/16  nudge [2] 109/15 109/17  number [51] 4/20 8/8 8/11 13/14 13/15  14/14 50/6 52/1 54/24 55/17 56/17  56/20 56/23 63/11 71/15 73/13 74/24  78/6 86/13 90/10 100/7 106/6 106/8  108/12 108/15 108/15 108/18 126/6  131/1 133/2 139/6 145/22 146/24  153/20 158/25 160/10 206/3 249/25  254/25 255/15 264/9 275/6 287/1  291/18 293/6 301/9 302/24 304/15  306/15 308/2 308/10  number 12 [1] 308/10  number 186 [1] 108/12  number 19 [1] 291/18  number 208 [1] 126/6  number 8 [2] 301/9 302/24  number for [1] 108/18  number forward [1] 160/10  number ten [1] 146/24  numbers [10] 59/10 62/4 70/11 70/20  72/25 75/3 77/8 77/20 117/15 255/14  numerous [1] 131/20  nurse [2] 215/17 252/17</p>	<p>261/25 263/5 270/5 270/7 274/21  276/5 283/1 286/2 287/10 291/13  292/22 293/15 302/19 305/9 305/11  306/2 307/10  objectionable [1] 239/7  objections [2] 117/1 269/25  objective [1] 308/11  observation [2] 151/14 151/25  observations [1] 199/3  observed [1] 265/17  observers [1] 115/19  observing [1] 179/20  obtain [4] 88/9 239/4 279/11 282/19  obtained [1] 26/5  obviously [29] 15/13 109/22 121/1  172/19 172/20 173/17 176/3 180/11  183/24 188/5 188/10 190/19 191/18  198/20 200/6 200/7 200/9 203/14  207/7 209/25 220/6 223/25 229/6  229/22 233/18 239/3 251/15 281/24  297/22  occasion [1] 301/20  occasions [1] 301/21  occluding [1] 222/10  occupant [45] 79/3 85/4 85/7 85/8  95/23 104/22 113/19 113/23 131/14  136/14 136/16 137/10 141/12 141/14  143/2 143/9 143/16 145/2 145/7  154/16 172/13 173/15 173/16 173/18  173/21 173/22 174/23 188/1 188/23  189/2 189/18 190/5 190/5 190/6 195/9  195/11 198/13 199/2 199/3 199/5  199/22 201/5 207/5 207/8 207/12  occupant's [1] 144/1  occupants [11] 18/10 98/18 136/9  157/22 157/23 187/17 192/7 192/9  192/18 192/23 200/12  occur [2] 92/2 92/10  occurred [13] 16/15 91/1 137/20  147/13 172/21 189/14 189/16 189/19  267/13 267/16 275/19 277/24 299/18  occurring [1] 32/22  October [1] 36/21  October/November [1] 36/21  odd [1] 98/3  odds [2] 41/7 85/3  off [56] 12/4 18/25 19/14 21/7 45/9  45/12 45/22 46/22 47/19 51/19 51/24  51/25 54/7 54/18 55/8 55/15 71/23  72/21 73/21 91/15 117/18 118/1  122/14 133/9 138/15 144/17 147/17  147/21 147/23 148/11 148/13 148/16  149/2 152/13 171/5 186/12 190/22  193/19 196/3 196/4 196/5 196/14  196/15 209/23 215/11 215/12 218/19  240/14 277/22 296/19 298/9 298/16  299/1 299/9 299/12 299/16  off-road [3] 148/11 148/13 148/16  offer [3] 93/9 140/21 140/21  offered [6] 26/1 89/25 92/16 139/4  139/4 163/17  offering [1] 90/3  offers [1] 93/8  office [5] 13/7 161/17 161/21 162/1  179/8  Officers [1] 151/25  offices [1] 179/6  OFFICIAL [3] 312/1 312/3 312/19  often [4] 114/9 138/16 153/3 212/10  oh [4] 2/1 25/4 204/9 242/18</p>	<p>okay [55] 11/17 18/17 33/14 39/11  41/15 42/2 44/17 44/18 45/3 48/15  50/8 75/8 86/1 88/5 101/2 105/17  117/3 139/20 144/7 157/8 162/22  165/18 165/22 192/14 196/7 196/17  199/14 210/10 216/10 219/13 223/19  226/11 240/20 241/19 256/14 267/12  268/14 270/13 278/21 287/24 291/11  297/3 298/21 298/24 300/19 302/22  304/14 305/23 306/3 306/6 306/10  307/5 307/13 307/16 310/7  old [11] 197/7 226/12 234/15 234/21  235/9 272/3 272/4 272/7 272/7 273/13  281/3  older [2] 226/12 230/14  on [519]  once [20] 13/2 65/17 92/18 94/22  96/25 102/18 104/8 105/25 110/15  143/7 149/24 164/3 168/13 173/2  173/10 229/4 284/6 288/16 288/17  290/7  one [156] 5/4 8/14 10/3 13/15 15/23  16/23 17/16 21/9 22/24 26/13 26/17  28/6 29/6 29/6 29/24 31/12 31/23 32/9  32/17 32/23 37/18 39/14 44/3 48/7  49/5 49/24 50/13 51/10 51/18 54/2  60/10 60/16 64/9 66/4 67/5 67/6 69/1  69/5 71/18 75/18 81/24 81/24 82/2  82/18 83/15 83/15 84/19 85/2 89/10  90/24 91/4 91/5 91/12 94/24 96/3 97/5  99/12 102/16 107/9 109/11 111/10  114/14 123/1 124/18 124/19 125/1  125/2 127/1 128/14 129/11 129/16  130/1 132/24 144/10 147/8 147/14  149/16 154/22 155/19 156/6 156/18  158/25 160/6 162/25 163/12 164/5  165/16 172/17 173/5 175/1 177/7  180/2 182/25 184/4 184/11 184/21  184/22 191/9 191/13 191/16 191/16  191/19 193/21 195/6 195/7 196/2  197/18 197/19 198/1 198/23 200/25  200/25 201/2 201/3 206/16 209/1  216/5 217/2 218/25 219/17 222/5  223/15 227/7 227/9 231/15 243/17  244/9 245/7 245/9 247/13 251/14  253/15 257/3 259/17 263/15 274/2  274/3 277/5 281/9 290/23 291/10  291/14 293/5 301/6 301/21 302/11  302/14 303/3 306/8 306/21 307/12  307/19 307/25 308/20 309/9 309/20  ones [3] 182/1 254/15 274/11  only [30] 15/6 34/20 41/14 66/17  127/13 128/6 160/2 160/3 163/17  196/22 210/21 212/24 213/10 214/2  216/5 218/24 227/9 242/25 259/11  260/18 264/15 269/6 270/23 274/11  281/9 282/23 298/22 302/8 306/8  307/5  onto [3] 15/9 15/11 67/23  open [6] 215/23 215/23 227/10 228/23  230/8 252/17  opened [1] 252/13  opening [4] 9/19 291/6 310/15 310/17  openings [1] 140/19  operate [1] 160/16  operating [2] 144/14 146/3  operation [1] 124/24  operational [1] 178/17  opinion [32] 39/22 40/2 40/3 40/4 40/7  43/20 52/20 84/16 89/4 120/6 146/11</p>
<p><b>O</b></p> <p>o'clock [1] 10/21  oath [6] 11/19 110/10 158/24 167/14  168/8 284/10  obese [1] 220/17  object [19] 72/11 92/24 109/3 123/3  127/18 196/18 200/14 204/15 210/18  210/22 211/19 212/15 218/23 239/2  263/3 268/11 285/8 309/19 309/20  objected [4] 163/10 163/11 164/16  165/10  objection [37] 5/25 39/16 41/10 44/25  61/11 72/22 73/9 73/12 90/9 95/7  116/15 123/9 126/23 133/4 139/8  151/16 151/21 156/23 164/19 256/7</p>		

O	Document 383	Page 344 of 362
<p>Case 4:23-cv-00088-CDL</p> <p>opinion... [21] 148/2 150/9 170/12 171/14 200/11 212/17 212/19 220/24 221/10 221/12 224/4 224/8 224/9 224/12 229/10 230/1 242/8 242/22 251/7 281/21 282/8</p> <p>opinions [29] 25/1 26/1 80/20 97/11 129/25 169/25 171/9 171/24 172/16 187/1 187/4 187/24 189/18 189/25 189/25 190/14 201/9 201/10 212/4 214/25 224/3 257/8 259/4 259/6 259/6 259/7 259/10 259/13 259/14</p> <p>opioids [1] 237/23</p> <p>opportunity [8] 35/23 100/13 100/14 104/11 109/23 112/15 115/10 115/18</p> <p>opposed [2] 156/14 172/17</p> <p>opposite [4] 8/19 97/3 225/17 226/1</p> <p>option [1] 122/2</p> <p>or [219] 4/24 5/9 5/15 7/19 8/20 10/4 10/9 10/22 10/24 11/2 11/3 12/20 14/11 15/13 15/16 15/16 16/2 18/24 22/3 22/6 25/6 26/5 29/6 29/6 29/7 29/8 30/7 30/11 30/25 31/8 31/12 34/25 40/3 43/6 44/17 44/19 44/23 52/17 53/15 58/3 59/15 63/10 63/13 63/16 67/7 67/16 68/4 68/10 72/10 75/14 79/4 80/22 86/11 90/25 91/14 91/21 91/25 91/25 92/4 92/4 92/8 96/10 98/3 98/5 98/10 101/7 102/7 108/7 117/15 119/15 128/12 129/1 129/22 130/17 132/7 133/19 138/7 138/11 140/15 141/9 143/18 147/19 149/25 150/14 150/18 150/24 151/4 152/8 152/13 152/13 152/24 155/19 155/20 156/7 158/2 161/4 161/13 162/25 163/1 165/12 166/2 166/3 166/10 166/22 166/23 167/8 167/8 170/9 171/3 172/17 172/20 173/23 176/17 176/23 177/13 179/11 179/11 181/7 181/8 182/1 182/18 183/12 184/17 185/15 185/16 185/19 186/18 189/6 194/9 196/19 198/10 198/15 200/12 201/11 201/18 206/25 207/2 208/13 211/16 212/9 212/10 213/24 215/6 215/9 215/21 216/24 217/2 221/6 222/10 222/22 223/10 223/21 226/3 229/12 229/19 229/19 229/20 230/3 230/24 239/21 242/8 242/9 243/1 243/2 248/20 249/17 250/9 250/19 250/20 251/14 261/2 261/3 263/16 263/22 265/25 266/22 267/22 268/4 269/2 270/6 271/10 271/14 272/7 273/24 276/3 278/2 279/25 280/7 280/14 280/19 281/6 281/15 288/5 289/1 289/18 289/25 291/10 291/21 291/25 292/15 293/7 293/8 293/14 294/16 294/17 295/9 295/12 295/14 298/5 298/12 301/8 302/8 304/6 304/18 304/22 307/7 308/18 308/18 310/22</p> <p>order [6] 13/1 56/14 106/5 107/11 108/14 243/23</p> <p>ordered [6] 159/8 250/3 250/7 250/11 250/16 250/24</p> <p>ordering [4] 241/4 241/6 243/22 243/24</p> <p>ordinary [3] 32/10 98/3 146/6</p> <p>organ [2] 217/4 220/13</p> <p>organism [1] 225/10</p> <p>organization [1] 119/9</p> <p>organizations [1] 119/4</p>	<p>organs [4] 182/25 214/4 214/13 214/24</p> <p>orient [2] 101/12 133/7</p> <p>orientation [2] 70/25 71/3</p> <p>orientations [1] 59/14</p> <p>oriented [4] 64/23 69/8 71/23 94/10</p> <p>original [2] 53/15 72/21</p> <p>originally [4] 45/6 111/19 111/20 201/2</p> <p>other [93] 8/17 9/16 13/23 26/19 27/17 30/13 30/15 31/4 31/12 32/14 37/5 46/2 47/17 52/6 52/12 55/11 65/9 72/16 74/24 76/15 82/11 96/11 96/13 97/9 97/18 97/23 107/14 107/19 107/21 108/3 111/20 114/25 115/9 115/11 116/3 122/14 130/13 137/15 142/11 144/5 147/8 149/18 150/20 150/21 155/13 155/20 156/14 157/13 158/9 158/10 166/9 166/15 166/17 166/17 166/20 167/5 167/9 167/11 167/22 172/17 181/9 181/19 184/19 185/19 185/20 185/23 186/2 189/14 189/17 194/9 205/10 212/8 214/17 217/4 223/5 223/15 225/3 228/5 230/18 240/25 241/23 247/8 247/18 247/21 252/11 254/15 257/20 258/5 258/9 278/4 278/6 279/17 286/20</p> <p>others [7] 66/1 119/23 136/12 146/25 147/1 151/6 164/12</p> <p>otherwise [2] 269/18 270/1</p> <p>our [29] 13/21 13/23 14/16 14/16 14/17 14/22 16/7 22/4 50/19 105/19 106/20 111/10 115/11 121/8 125/8 160/21 164/25 178/16 182/25 211/23 227/8 227/19 246/20 246/24 250/22 276/21 291/13 294/5 308/23</p> <p>ours [1] 163/16</p> <p>ourselves [1] 305/12</p> <p>out [102] 5/21 11/15 16/9 17/18 17/22 18/4 20/23 22/2 27/6 33/19 39/5 39/17 42/1 48/17 53/14 54/2 56/1 56/1 56/12 59/10 63/24 69/3 69/12 70/20 79/4 88/6 89/1 89/7 95/17 98/3 102/1 102/4 103/12 121/4 121/10 121/16 121/23 122/15 124/16 131/18 134/3 140/14 141/1 141/20 144/5 144/18 146/2 146/6 149/2 158/4 160/13 165/8 166/9 166/21 167/4 168/1 173/2 174/17 175/8 175/10 175/11 175/13 175/13 175/14 176/17 176/17 179/12 180/4 186/14 186/17 192/22 194/16 194/25 199/7 209/2 216/17 216/18 216/23 217/1 217/1 218/4 218/6 219/15 226/25 230/24 240/21 242/14 243/6 243/16 251/22 253/9 253/14 254/4 255/14 264/1 287/18 293/5 303/6 306/21 309/3 310/10 310/12</p> <p>outboard [4] 30/13 30/16 31/16 35/2</p> <p>outcome [1] 40/25</p> <p>outer [3] 48/4 50/5 50/7</p> <p>outside [10] 25/8 38/20 80/11 111/3 136/18 136/21 156/23 185/11 226/3 279/13</p> <p>outsides [1] 209/2</p> <p>outsmart [1] 305/12</p> <p>over [90] 10/4 12/24 13/18 13/22 15/9 16/4 16/16 26/2 35/15 35/16 37/14 43/2 43/12 44/4 48/2 52/22 62/21 68/4 75/8 77/19 77/21 91/2 92/14 94/6 96/2 100/6 100/8 105/18 109/6 111/16 114/16 114/17 114/18 116/5 118/20 122/8 134/12 134/16 134/22 138/6</p>	<p>138/18 142/2 143/15 144/18 150/14 150/24 151/4 151/7 153/8 154/8 154/10 161/22 161/23 177/14 185/13 191/10 191/12 193/1 193/4 193/6 193/10 193/19 196/7 196/8 196/16 197/8 197/10 197/13 197/15 197/16 203/4 205/15 207/20 207/21 207/24 208/3 210/21 210/21 218/1 220/17 234/11 251/20 254/2 267/13 275/7 275/16 280/10 280/19 284/6 306/7</p> <p>over-layed [1] 94/6</p> <p>overall [2] 56/6 185/24</p> <p>overlap [1] 121/5</p> <p>overnight [1] 307/14</p> <p>overruled [12] 41/11 127/11 136/25 148/8 151/19 156/25 200/23 219/3 239/8 263/5 276/7 285/9</p> <p>overtun [1] 221/5</p> <p>overview [3] 120/20 126/21 171/9</p> <p>own [14] 35/24 38/18 39/4 39/23 70/23 78/10 100/6 132/25 150/20 163/2 202/17 264/2 286/14 288/23</p> <p>owned [1] 268/25</p> <p>owner [1] 12/5</p> <p>oxygen [10] 226/19 226/22 226/22 228/4 228/6 228/9 228/13 228/15 228/16 228/24</p> <p>oxygenate [2] 228/8 228/11</p> <hr/> <p>P</p> <p>p.m [1] 306/14</p> <p>P131 [1] 70/2</p> <p>P25 [1] 164/13</p> <p>P745 [1] 164/14</p> <p>P867A [1] 10/7</p> <p>pacemaker [1] 243/2</p> <p>page [60] 12/3 21/17 21/20 22/24 37/12 53/17 53/17 72/19 77/6 81/23 87/2 87/22 88/5 88/18 89/9 89/21 90/6 90/7 117/3 117/9 117/10 117/11 117/11 117/12 117/13 117/14 128/17 132/24 133/3 137/11 139/1 147/7 158/20 159/6 163/6 204/11 209/13 210/8 256/21 256/22 264/9 267/9 269/15 269/20 269/20 274/14 274/15 274/15 274/20 278/12 278/15 293/6 293/8 301/10 303/1 303/2 306/21 308/9 308/10 312/9</p> <p>page 1 [2] 87/22 158/20</p> <p>page 11 [1] 303/2</p> <p>page 12 [2] 137/11 303/1</p> <p>page 13 [1] 301/10</p> <p>page 18 [2] 293/6 293/8</p> <p>page 2 [1] 72/19</p> <p>page 22 [1] 308/10</p> <p>page 24 [1] 77/6</p> <p>page 3 [1] 88/5</p> <p>page 36 [1] 88/18</p> <p>page 4 [2] 269/15 269/20</p> <p>page 5 [1] 139/1</p> <p>page 588 [2] 132/24 133/3</p> <p>page 6 [1] 147/7</p> <p>page 7 [1] 37/12</p> <p>page 8 [1] 274/15</p> <p>page right [1] 53/17</p> <p>pages [6] 126/17 126/18 128/18 128/21 219/6 278/13</p> <p>PAGESCRANTOM.COM [1] 1/17</p> <p>paid [19] 13/7 14/14 37/1 37/7 99/13 99/16 99/20 158/17 159/1 159/9</p>



<p>P Case 4:23-cv-00088-CDL Document 353 Filed 03/21/25 Page 345 of 363</p> <p>paid... [9] 159/11 232/6 232/25 237/16 237/19 245/19 245/23 245/25 292/13</p> <p>pain [6] 227/12 230/20 241/5 294/16 298/3 299/4</p> <p>pains [3] 182/20 219/6 279/25</p> <p>palliative [3] 229/1 229/4 229/8</p> <p>palpitations [3] 182/20 218/10 243/20</p> <p>panel [8] 17/14 48/13 90/23 90/25 144/12 173/20 261/3 261/4</p> <p>panels [1] 104/5</p> <p>paper [20] 119/19 124/16 135/3 135/7 135/16 135/25 136/6 185/17 211/14 212/22 213/2 213/4 213/5 213/5 213/10 213/12 213/15 214/1 214/16 221/19</p> <p>papers [7] 117/19 119/15 119/17 119/18 177/15 185/16 211/11</p> <p>paragraph [3] 9/19 305/10 306/22</p> <p>parallel [1] 144/13</p> <p>paralysis [1] 234/21</p> <p>paralyzed [3] 12/20 234/16 249/17</p> <p>pardon [3] 156/20 255/1 310/25</p> <p>parent [1] 235/14</p> <p>parents [1] 234/15</p> <p>park [1] 216/17</p> <p>parks [1] 215/18</p> <p>parroting [1] 211/20</p> <p>part [56] 5/25 10/11 12/5 20/4 20/4 20/12 20/15 22/21 23/21 25/19 27/5 27/6 27/19 34/14 43/16 43/17 48/11 50/1 53/20 53/20 53/24 71/21 78/18 106/21 113/25 118/11 123/25 125/15 125/20 131/24 132/12 133/17 133/17 133/25 138/24 142/20 144/11 144/18 152/16 152/18 161/24 161/25 166/9 173/22 177/18 178/8 183/4 196/15 197/2 208/25 223/8 240/17 245/20 280/11 280/14 280/19</p> <p>Partially [1] 162/9</p> <p>participated [3] 114/25 115/2 247/3</p> <p>particular [22] 10/2 12/11 21/12 56/19 58/15 68/8 74/5 76/1 76/15 89/8 91/22 94/11 94/22 99/9 143/23 166/16 167/8 169/21 188/3 292/11 293/24 297/19</p> <p>particularly [1] 291/17</p> <p>parties [3] 106/5 166/7 296/21</p> <p>partners [1] 14/10</p> <p>parts [5] 56/1 65/20 105/5 121/6 124/11</p> <p>party [10] 166/7 166/18 166/19 166/22 166/24 167/2 167/14 167/16 167/17 200/17</p> <p>pass [2] 104/23 133/14</p> <p>passenger [39] 17/8 18/12 18/15 18/18 18/20 19/13 19/16 22/13 22/16 25/5 26/19 26/21 28/2 28/24 30/4 35/9 35/16 38/18 41/18 41/18 41/19 58/3 58/21 64/18 64/19 64/20 64/21 64/24 79/6 102/2 152/16 153/8 153/9 154/4 154/8 154/10 155/4 225/6 253/4</p> <p>passes [3] 133/10 133/24 229/9</p> <p>passing [2] 145/6 295/11</p> <p>passive [1] 144/10</p> <p>past [6] 74/6 121/20 143/12 164/16 213/17 243/5</p> <p>patch [1] 96/24</p> <p>path [2] 32/11 146/8</p> <p>pathologist [7] 264/18 264/19 265/2 265/15 275/24 277/10 277/16</p>	<p>pathologists [1] 242/13</p> <p>pathology [1] 239/21</p> <p>patience [5] 105/19 114/7 189/20 189/22 189/23</p> <p>patient [9] 181/16 181/19 182/19 182/23 185/7 210/12 210/12 244/6 244/6</p> <p>patient's [1] 279/6</p> <p>patients [16] 176/2 179/25 180/25 181/8 181/15 181/18 182/4 182/4 182/6 183/10 184/23 185/1 185/5 220/4 223/6 223/9</p> <p>Patrol [2] 151/25 191/24</p> <p>pattern [5] 136/15 170/21 207/19 208/16 294/8</p> <p>patterns [5] 180/8 188/2 190/8 207/11 211/12</p> <p>PAUL [3] 2/8 61/12 114/3</p> <p>pay [3] 160/21 173/1 245/21</p> <p>payload [1] 86/13</p> <p>payments [1] 11/4</p> <p>PDF [1] 53/18</p> <p>PEACHTREE [4] 1/23 2/2 2/4 2/10</p> <p>peak [2] 64/5 85/3</p> <p>pedal [1] 147/22</p> <p>pedestrian [1] 179/15</p> <p>pedicle [4] 196/22 196/24 197/1 197/2</p> <p>PEELER [1] 1/23</p> <p>peer [6] 119/17 119/20 119/22 136/6 185/14 211/14</p> <p>peer-review [2] 119/17 119/22</p> <p>peer-reviewed [3] 136/6 185/14 211/14</p> <p>pelvic [1] 144/3</p> <p>pelvis [1] 144/1</p> <p>people [38] 5/18 36/5 36/8 57/18 85/14 113/12 113/22 121/15 122/13 122/14 138/15 138/16 146/2 149/5 150/21 153/18 153/20 180/14 205/12 205/13 218/5 220/4 222/25 230/13 237/21 237/22 240/21 241/16 241/19 241/20 241/20 244/24 249/23 249/24 251/3 279/7 281/5 285/24</p> <p>people's [1] 279/4</p> <p>per [15] 6/15 7/2 49/11 185/3 189/4 190/24 191/2 193/13 194/15 194/17 268/7 270/22 271/18 271/19 281/9</p> <p>percent [31] 5/13 49/10 62/21 63/22 63/24 85/4 194/16 212/25 213/10 214/2 214/21 225/9 240/22 240/25 241/9 241/13 241/14 241/20 241/23 248/2 248/7 248/8 269/6 270/23 271/5 271/8 271/10 271/10 271/25 273/11 281/5</p> <p>percentage [2] 235/11 296/9</p> <p>percentile [2] 272/3 281/2</p> <p>perceptions [1] 40/5</p> <p>perfect [2] 154/23 193/3</p> <p>perfectly [9] 27/11 28/6 28/17 43/5 53/24 65/4 154/15 241/23 273/13</p> <p>perform [5] 46/23 47/9 188/11 265/4 265/6</p> <p>performance [13] 51/23 52/7 55/21 56/6 75/21 88/9 117/23 118/15 120/4 127/2 127/3 138/21 142/16</p> <p>performed [8] 13/11 98/21 115/16 127/4 127/23 170/17 182/10 188/12</p> <p>perhaps [2] 195/10 262/4</p> <p>period [8] 55/8 55/24 62/15 76/15 84/8 160/3 160/4 160/7</p> <p>permit [1] 137/14</p>	<p>person [15] 12/20 14/8 80/16 136/20 137/9 165/2 166/10 180/20 184/14 184/16 203/4 203/12 216/5 269/6 291/10</p> <p>person's [2] 116/4 267/1</p> <p>personal [2] 6/1 72/10</p> <p>personally [2] 53/12 273/20</p> <p>personnel [1] 223/16</p> <p>persons [1] 137/16</p> <p>perspective [2] 41/25 185/25</p> <p>petechia [4] 223/7 223/9 223/11 223/15</p> <p>Ph.D [2] 28/20 69/18</p> <p>phase [5] 124/9 131/21 190/22 310/24 311/2</p> <p>PHENDERSON [1] 2/11</p> <p>PHILIP [1] 2/10</p> <p>philosophy [1] 98/12</p> <p>PHILYAW [4] 1/15 106/18 106/23 267/4</p> <p>PHN131 [2] 45/22 45/24</p> <p>PHNs [1] 46/5</p> <p>phone [5] 74/21 216/8 216/9 237/12 279/16</p> <p>photo [24] 19/5 21/18 22/2 22/12 22/25 33/6 37/15 37/23 38/2 38/8 39/1 41/23 82/11 90/8 90/8 92/22 102/13 103/2 132/21 134/3 155/23 204/24 206/7 206/14</p> <p>photograph [22] 21/9 23/8 33/9 33/12 89/22 94/1 95/18 96/2 179/10 191/23 200/1 204/18 204/19 206/21 262/1 262/4 262/8 262/25 280/13 280/18 286/23 287/3</p> <p>photographing [1] 36/7</p> <p>photographs [10] 21/1 21/9 36/3 36/6 89/21 104/3 170/24 179/21 199/19 200/13</p> <p>photos [19] 19/4 31/21 36/10 36/11 37/11 37/13 39/11 90/6 102/16 102/17 132/25 171/19 191/20 199/16 200/16 215/10 257/3 259/17 260/15</p> <p>phrase [1] 103/18</p> <p>physical [9] 46/23 51/15 57/10 137/8 138/11 138/14 138/19 151/13 151/23</p> <p>physically [2] 199/15 205/20</p> <p>physician [6] 169/6 178/14 179/24 180/13 264/19 264/24</p> <p>physicians [2] 185/15 237/6</p> <p>physics [2] 83/12 194/17</p> <p>PI [1] 122/7</p> <p>pick [7] 173/12 212/10 212/10 214/16 214/17 214/17 236/22</p> <p>picked [4] 96/22 96/25 97/1 279/16</p> <p>picking [1] 174/12</p> <p>pickup [6] 46/1 57/25 78/5 121/19 173/24 237/1</p> <p>pickups [1] 86/16</p> <p>picture [5] 29/22 101/8 202/10 202/13 261/19</p> <p>pictures [9] 35/3 188/7 188/7 198/15 198/16 198/17 258/9 259/2 276/10</p> <p>piece [8] 27/1 27/9 113/15 122/17 132/2 132/13 133/9 287/12</p> <p>pieces [7] 48/7 122/18 123/23 132/5 132/9 132/9 196/23</p> <p>pill [1] 28/2</p> <p>pillar [41] 17/7 17/8 27/16 27/22 27/23 28/1 29/9 29/10 30/5 30/6 30/17 31/14 34/15 35/9 35/10 48/12 49/10 49/20</p>
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<p>P Case 4:23-cv-00088-CDL</p> <p>pillar... [23] 49/23 49/24 50/1 50/4 50/10 50/16 65/1 65/8 65/10 65/13 66/5 66/8 66/16 67/23 68/20 69/2 71/6 91/24 103/22 105/2 199/9 199/10 199/10</p> <p>Pillar's [1] 34/9</p> <p>pillars [16] 16/12 16/25 17/2 17/4 17/12 26/22 28/23 34/12 35/14 48/14 68/16 68/18 68/23 91/19 199/8 199/9</p> <p>pillow [3] 175/6 175/7 175/15</p> <p>Pilot [1] 213/9</p> <p>pinned [2] 29/10 30/10</p> <p>pipes [5] 218/12 218/14 218/14 218/15 219/12</p> <p>pitch [4] 64/17 65/23 66/7 68/22</p> <p>pitched [2] 91/2 267/13</p> <p>pitches [1] 193/19</p> <p>pitching [4] 65/3 65/7 68/6 68/7</p> <p>pitchover [10] 191/4 191/8 191/9 191/15 191/17 191/18 193/8 281/12 281/13 281/14</p> <p>pizza [1] 197/12</p> <p>place [3] 19/13 180/16 296/25</p> <p>placed [1] 25/3</p> <p>places [1] 111/20</p> <p>plain [6] 203/17 205/9 206/13 206/22 207/4 262/19</p> <p>plaintiff [9] 12/22 108/2 158/25 248/5 248/6 272/19 279/17 283/23 284/5</p> <p>plaintiffs [17] 1/4 1/12 4/15 7/7 8/16 26/5 72/9 107/10 115/21 117/2 163/8 170/8 248/9 292/20 302/9 306/10 309/18</p> <p>Plaintiffs' [34] 19/12 21/15 33/2 37/10 47/23 48/22 49/16 50/18 69/5 71/9 72/7 95/18 107/19 115/25 132/16 134/14 158/20 170/4 199/25 247/24 248/7 255/22 256/2 256/6 269/14 269/16 269/24 274/14 287/1 287/2 287/13 289/23 290/1 296/20</p> <p>plan [3] 121/8 123/23 298/8</p> <p>plane [1] 179/13</p> <p>planning [1] 122/9</p> <p>plant [2] 124/23 125/10</p> <p>plants [1] 83/8</p> <p>plastic [4] 133/17 133/18 134/6 152/21</p> <p>plate [7] 132/19 132/22 133/7 134/15 134/24 135/4 136/8</p> <p>platen [13] 60/12 60/14 60/20 61/19 66/24 67/2 67/12 67/19 68/25 88/20 88/21 96/23 101/17</p> <p>plates [2] 132/17 152/15</p> <p>platform [5] 76/20 78/12 173/25 174/16 174/16</p> <p>play [16] 125/16 130/5 130/18 130/24 131/7 139/14 140/3 143/9 143/10 143/18 143/20 144/7 144/20 145/8 146/11 192/24</p> <p>playing [2] 184/15 292/15</p> <p>pleading [4] 6/15 6/17 8/24 10/11</p> <p>pleadings [1] 6/8</p> <p>please [38] 4/6 86/12 87/2 87/21 88/6 89/17 91/15 96/18 97/5 98/2 117/12 128/15 129/9 135/15 140/3 159/1 159/7 164/4 168/13 169/2 192/10 192/12 198/22 198/23 199/2 199/25 202/3 205/2 206/1 254/22 255/22 257/1 267/8 267/9 267/12 278/12 284/3 293/19</p>	<p>plenty [2] 222/3 265/23</p> <p>plug [2] 133/10 152/18</p> <p>plumbing [10] 182/24 183/1 183/4 183/8 183/11 240/5 240/8 240/24 241/3 241/21</p> <p>plural [1] 51/12</p> <p>plus [3] 117/19 216/19 219/6</p> <p>PMALEK [1] 2/9</p> <p>pneumonia [5] 227/25 228/1 229/12 230/18 231/1</p> <p>PO [1] 1/16</p> <p>point [47] 5/18 5/23 16/24 17/7 22/2 29/5 29/5 29/15 31/18 33/19 33/21 34/1 34/15 45/9 54/3 64/12 65/11 65/14 66/9 66/19 66/21 68/5 68/9 71/4 83/21 91/11 95/23 103/4 106/8 107/17 108/17 109/4 121/23 122/6 122/7 124/20 150/2 165/16 186/15 194/8 206/21 216/4 239/24 258/20 258/22 263/10 298/4</p> <p>POINTE [1] 1/15</p> <p>pointed [3] 16/9 89/1 95/17</p> <p>pointing [1] 278/18</p> <p>points [15] 27/15 28/1 30/24 32/10 32/20 32/21 34/5 34/10 46/22 48/12 84/10 94/7 94/8 103/22 161/16</p> <p>pole [1] 118/8</p> <p>police [5] 36/4 36/7 36/11 179/11 186/13</p> <p>Pontiac [1] 245/11</p> <p>poor [5] 53/22 59/3 59/9 62/11 308/18</p> <p>pop [1] 21/16</p> <p>population [2] 84/25 235/11</p> <p>portion [7] 88/4 128/6 139/17 150/18 165/19 195/23 195/23</p> <p>portions [3] 66/2 80/23 289/25</p> <p>pose [2] 294/3 309/7</p> <p>position [21] 6/25 7/12 20/8 25/12 38/15 79/12 79/13 91/13 97/10 97/20 98/15 173/3 173/4 206/12 207/4 221/23 230/6 251/12 253/14 254/4 294/5</p> <p>positional [25] 41/6 79/12 170/25 171/1 171/18 207/9 207/10 221/9 221/15 221/17 221/21 223/5 224/6 230/3 251/13 251/14 253/16 254/7 266/7 266/8 266/13 266/18 266/22 266/24 267/1</p> <p>positionally [1] 199/13</p> <p>positioned [1] 39/6</p> <p>positive [1] 228/22</p> <p>possession [1] 108/2</p> <p>possibility [1] 307/5</p> <p>possibly [3] 263/11 282/5 294/16</p> <p>posterior [2] 195/23 208/23</p> <p>posterity [1] 126/12</p> <p>Postmortem [1] 213/7</p> <p>potato [1] 288/25</p> <p>potential [2] 107/22 292/25</p> <p>potentially [1] 271/1</p> <p>pound [10] 54/12 56/12 58/8 58/9 62/1 62/7 63/9 66/22 196/8 219/20</p> <p>pounding [1] 219/15</p> <p>pounds [25] 54/15 54/20 60/17 60/25 61/23 61/24 62/7 63/3 63/19 63/21 63/22 63/24 68/13 70/5 70/6 70/9 70/10 74/3 74/20 74/23 74/25 89/13 100/22 101/1 272/4</p> <p>pout [1] 147/2</p> <p>power [1] 292/12</p>	<p>PowerPoint [1] 90/3</p> <p>powertrain [2] 112/19 113/9</p> <p>practice [2] 116/18 264/20</p> <p>practicing [3] 178/13 179/24 180/13</p> <p>PRATHER [8] 1/18 204/19 212/23 255/2 255/19 262/3 272/18 280/3</p> <p>Prather's [1] 270/6</p> <p>pre [4] 141/11 141/13 181/3 223/16</p> <p>pre-hospital [2] 181/3 223/16</p> <p>pre-load [2] 141/11 141/13</p> <p>preceding [1] 309/9</p> <p>precise [2] 33/10 36/21</p> <p>precluded [2] 300/7 300/8</p> <p>precrash [1] 147/11</p> <p>predictive [1] 85/3</p> <p>prefer [2] 290/15 307/2</p> <p>preference [6] 10/10 39/12 39/13 40/12 40/14 83/14</p> <p>prejudiced [1] 107/7</p> <p>premise [2] 67/10 67/11</p> <p>prepare [2] 10/3 288/15</p> <p>preprogram [2] 121/13 121/14</p> <p>presence [1] 97/13</p> <p>present [5] 109/23 159/4 256/11 275/22 275/24</p> <p>presented [3] 8/16 219/5 290/5</p> <p>presents [1] 97/19</p> <p>preserve [1] 289/17</p> <p>preserved [1] 307/15</p> <p>president [1] 227/5</p> <p>press [1] 68/14</p> <p>pressed [1] 66/10</p> <p>presses [2] 67/22 69/1</p> <p>pressing [1] 38/22</p> <p>pressure [5] 133/18 152/21 220/8 220/8 228/22</p> <p>pressures [1] 133/15</p> <p>presumption [2] 291/19 291/24</p> <p>pretensioner [4] 139/19 140/23 140/24 141/4</p> <p>pretensioners [1] 140/12</p> <p>pretrial [4] 106/5 107/11 108/13 166/8</p> <p>pretty [11] 7/11 11/7 38/16 42/21 116/7 139/12 153/10 165/1 165/8 196/13 301/24</p> <p>prevent [2] 79/1 84/24</p> <p>prevented [2] 292/15 292/18</p> <p>previous [3] 36/19 167/2 182/17</p> <p>previously [4] 107/22 165/10 257/2 274/21</p> <p>primarily [1] 18/14</p> <p>principle [1] 292/20</p> <p>principles [1] 258/7</p> <p>prior [7] 46/16 106/13 107/11 107/12 116/2 258/6 306/17</p> <p>privacy [1] 279/9</p> <p>privilege [1] 183/25</p> <p>privy [1] 252/4</p> <p>probably [16] 7/15 36/20 41/22 78/13 92/23 109/17 184/2 190/12 199/8 203/13 228/9 234/11 246/21 255/4 286/12 303/15</p> <p>problem [16] 23/15 33/14 108/6 180/16 183/9 183/11 218/4 228/10 255/13 268/12 275/2 295/3 295/4 295/6 295/16 310/19</p> <p>problems [9] 33/8 33/9 33/10 183/8 218/7 219/6 220/21 241/21 243/18</p> <p>procedures [1] 182/5</p> <p>proceed [2] 11/20 168/18</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

P	Case 4:23-cv-00088-CDL Document 333 Filed 03/21/25 Page 347 of 362	
<p>proceedings [4] 4/2 252/4 311/12 312/8</p> <p>process [27] 6/9 16/20 18/13 84/7 119/20 119/22 119/23 119/24 120/16 120/17 120/20 120/22 121/3 121/4 122/6 123/13 123/19 124/25 125/9 125/14 125/14 125/15 125/21 142/2 208/2 209/18 209/22</p> <p>processes [3] 195/25 198/11 207/25</p> <p>produce [2] 126/15 286/24</p> <p>produced [6] 52/1 54/6 71/24 106/7 106/19 106/25</p> <p>produces [1] 47/16</p> <p>product [17] 13/3 92/21 93/3 124/12 124/13 232/2 232/7 232/8 232/25 233/1 236/6 237/17 246/25 248/5 248/9 309/6 309/8</p> <p>production [14] 81/19 82/2 82/11 83/4 83/7 89/13 93/24 95/17 101/7 103/2 104/14 107/5 124/22 156/10</p> <p>products [2] 158/13 233/12</p> <p>professional [3] 112/4 119/4 237/15</p> <p>professor [4] 169/6 169/7 169/10 169/11</p> <p>profits [1] 12/12</p> <p>program [11] 46/1 53/7 53/8 122/7 124/1 124/20 177/8 178/2 178/3 245/20 269/17</p> <p>programs [3] 112/20 122/15 177/7</p> <p>progress [1] 288/12</p> <p>project [5] 52/17 69/22 69/24 72/4 73/17</p> <p>projects [2] 159/18 177/12</p> <p>prominent [1] 32/19</p> <p>promise [1] 55/11</p> <p>prone [3] 208/7 225/12 227/21</p> <p>proof [1] 305/16</p> <p>proper [1] 152/7</p> <p>properly [17] 135/13 138/5 150/10 150/19 151/15 152/25 154/8 154/10 154/24 155/11 218/18 235/12 235/13 293/23 297/17 297/20 298/10</p> <p>properties [2] 105/4 142/15</p> <p>Proportion [1] 160/13</p> <p>proposed [1] 85/11</p> <p>protection [5] 85/12 113/19 140/21 174/23 279/3</p> <p>prototype [1] 124/9</p> <p>prototypes [5] 123/22 123/25 124/2 124/9 124/11</p> <p>proves [4] 5/17 6/17 134/15 138/5</p> <p>provide [6] 85/12 111/9 141/10 159/8 162/5 201/22</p> <p>provided [5] 106/4 106/11 107/3 162/2 192/6</p> <p>providers [1] 236/20</p> <p>provides [3] 119/12 144/2 162/16</p> <p>providing [2] 44/1 111/11</p> <p>proximal [1] 225/25</p> <p>proximate [5] 4/12 7/5 291/4 293/14 298/6</p> <p>proximately [1] 8/1</p> <p>public [3] 1/25 125/13 279/4</p> <p>publication [1] 119/22</p> <p>publications [5] 117/6 117/10 117/15 185/13 185/14</p> <p>publish [2] 118/25 119/17</p> <p>published [17] 116/10 117/8 118/22 119/1 119/15 119/19 120/1 135/3</p>	<p>135/7 136/6 153/18 153/21 177/15 185/17 185/19 266/12 266/16</p> <p>puffy [1] 141/9</p> <p>pull [8] 14/22 16/19 49/16 87/21 196/10 198/22 199/25 238/25</p> <p>pulled [9] 19/14 19/17 20/12 20/23 53/14 54/2 131/18 196/14 196/15</p> <p>pulls [1] 141/1</p> <p>pulmonary [1] 242/1</p> <p>pulse [7] 215/21 215/22 216/3 216/7 254/21 260/17 260/20</p> <p>pump [1] 183/3</p> <p>pumping [2] 181/14 218/17</p> <p>pumps [1] 217/1</p> <p>purchased [3] 36/20 36/23 273/2</p> <p>pure [1] 285/1</p> <p>purely [1] 274/18</p> <p>purple [3] 223/18 223/23 224/2</p> <p>purports [1] 257/8</p> <p>purpose [6] 79/1 88/7 189/10 189/11 190/13 297/11</p> <p>purposes [25] 41/5 53/21 61/18 89/19 90/1 92/17 93/15 109/3 131/4 135/19 141/8 163/8 204/5 209/15 211/25 214/25 270/14 272/20 274/18 274/22 287/17 292/20 299/14 303/19 308/12</p> <p>pursuant [2] 159/7 312/5</p> <p>push [2] 30/15 32/6</p> <p>pushed [1] 202/10</p> <p>pushing [3] 101/9 101/18 227/16</p> <p>put [72] 8/21 9/2 9/4 10/16 22/24 32/25 33/1 33/6 43/23 44/9 45/15 47/12 48/16 62/9 78/10 79/11 96/8 104/25 109/21 125/9 125/19 143/1 145/24 154/19 163/12 181/22 184/9 192/11 195/20 197/11 199/25 202/3 202/19 203/19 204/19 206/1 206/10 206/11 206/15 206/25 209/13 214/11 217/23 221/18 227/2 228/20 229/2 229/4 229/8 235/2 243/4 253/18 253/21 254/22 255/22 257/1 262/2 262/5 267/3 267/9 269/14 272/5 272/9 274/24 278/12 284/5 287/14 289/18 290/7 294/17 296/6 309/12</p> <p>puts [3] 8/25 177/9 284/7</p> <p>putting [8] 71/4 77/18 104/3 155/15 231/3 243/21 287/14 292/25</p> <p>PX [1] 102/12</p> <p>PX186.2 [1] 88/18</p> <p>PX255 [1] 101/7</p> <p>PX583.5 [1] 95/6</p> <p>PX745 [1] 164/9</p>	<p>195/18 200/14 200/15 200/19 200/20 204/13 204/14 212/8 212/22 236/25 236/25 238/4 238/22 239/10 242/17 242/18 242/21 243/10 243/11 244/2 247/11 250/10 251/6 256/13 259/22 259/23 260/21 260/21 292/23 298/7 300/10 304/6 309/15 310/8</p> <p>questioned [1] 7/16</p> <p>questioning [2] 90/22 239/3</p> <p>questions [25] 15/21 27/5 35/20 44/20 53/21 55/11 85/20 88/14 102/25 105/13 115/11 128/24 142/11 158/24 162/18 167/5 167/10 167/11 204/14 230/5 231/15 238/15 244/5 263/15 283/18</p> <p>quick [2] 174/18 175/13</p> <p>quickly [7] 113/4 123/15 175/12 175/12 175/13 209/12 236/1</p> <p>quite [3] 113/3 141/9 154/14</p> <p>quoted [1] 301/23</p> <p>quoting [1] 42/21</p>
	R	
	<p>quadruplegia [1] 234/21</p> <p>quadruplegic [1] 234/17</p> <p>qualification [1] 33/14</p> <p>qualifications [1] 116/20</p> <p>qualified [8] 40/6 136/18 137/13 210/19 210/24 212/16 218/24 219/1</p> <p>quality [1] 53/23</p> <p>quantify [2] 22/20 23/17</p> <p>quarrel [5] 30/3 44/22 70/17 70/21 74/9</p> <p>quasi [2] 63/11 81/17</p> <p>quasi-static [2] 63/11 81/17</p> <p>question [62] 14/25 15/1 21/13 27/13 39/25 40/9 40/10 41/5 41/13 45/1 50/8 52/4 55/12 59/24 61/18 70/17 72/14 80/2 80/6 80/18 83/9 85/19 117/19 127/6 151/21 157/18 158/25 170/7</p>	<p>race [1] 112/16</p> <p>racing [4] 112/18 112/20 113/1 217/19</p> <p>radical [1] 153/2</p> <p>radiological [3] 195/16 209/10 210/23</p> <p>radiologist [4] 210/21 211/2 264/25 265/1</p> <p>radiologists [1] 209/25</p> <p>radiology [18] 137/3 170/16 170/19 171/11 188/5 207/18 210/19 210/25 212/2 212/13 212/25 214/22 222/19 223/3 277/2 282/1 282/3 282/9</p> <p>Rafael [4] 247/2 247/13 256/1 256/19</p> <p>rail [1] 186/13</p> <p>rails [1] 17/12</p> <p>rain [1] 27/6</p> <p>raise [3] 110/9 168/7 301/8</p> <p>raised [3] 106/18 244/14 307/20</p> <p>Ram [7] 42/15 76/25 77/11 86/7 86/10 87/6 173/24</p> <p>ramps [1] 143/21</p> <p>RAMSEY [2] 1/18 1/19</p> <p>ran [3] 96/20 103/19 299/16</p> <p>range [4] 58/24 58/25 155/17 191/2</p> <p>ranges [1] 129/6</p> <p>Raphael [2] 278/8 278/10</p> <p>rapid [3] 68/22 174/19 181/19</p> <p>rare [3] 109/19 191/5 267/2</p> <p>rate [9] 57/21 65/7 175/14 181/11 181/20 181/20 187/13 187/14 219/16</p> <p>rated [1] 271/4</p> <p>rates [1] 188/23</p> <p>rather [7] 83/10 95/14 137/10 167/25 238/9 270/10 275/16</p> <p>rating [18] 101/6 268/3 268/20 268/24 269/1 269/5 269/20 270/9 270/17 270/19 270/20 271/7 272/6 272/10 272/14 273/6 273/9 281/17</p> <p>ratio [17] 56/18 56/23 59/10 63/12 67/7 67/19 74/14 74/19 76/22 77/11 77/12 77/13 77/14 87/3 87/11 87/16 97/16</p> <p>ratio-ing [1] 59/10</p> <p>ration [1] 97/17</p> <p>rational [1] 40/4</p> <p>ratios [3] 57/9 78/2 86/24</p> <p>ray [1] 214/10</p> <p>rays [6] 178/4 211/4 211/5 211/6 211/6 211/13</p>



<p>R  reach [3] 39/23 143/9 288/9  reached [2] 288/11 300/10  reaches [2] 215/19 215/20  reaching [1] 288/8  read [25] 42/14 53/24 72/20 77/9  134/18 136/4 151/11 211/7 211/7  236/24 238/16 239/10 239/13 239/14  239/15 239/17 239/19 239/20 239/22  240/11 260/2 260/8 276/13 283/10  293/18  reading [4] 61/3 228/24 229/3 292/16  readings [1] 15/16  ready [1] 124/22  real [3] 91/23 207/23 209/12  real-life [1] 91/23  realized [2] 184/6 204/23  realizes [1] 216/5  really [25] 7/21 21/10 24/15 77/23  104/23 109/25 113/3 114/11 119/2  134/11 137/18 141/8 141/11 153/17  154/12 174/18 174/20 188/25 188/25  209/24 227/9 253/13 288/10 300/21  307/11  rear [1] 131/19  Reardon [1] 236/17  reason [15] 53/19 58/20 58/22 68/2  71/16 75/22 102/13 145/5 157/19  171/6 197/22 251/2 299/2 303/3 307/4  reasonable [8] 6/24 170/1 187/5  220/24 224/5 224/12 229/10 230/1  reasons [3] 217/10 224/10 224/11  reassured [1] 219/12  rebreather [2] 227/3 228/14  rebut [2] 80/19 311/4  rebuttal [8] 7/7 283/23 283/25 284/5  284/6 286/21 292/16 311/7  recalibrate [1] 181/22  recall [65] 6/1 8/6 23/3 24/3 24/4 24/19  24/20 24/23 24/24 25/2 25/3 25/5  25/11 25/15 29/23 36/13 36/23 42/4  42/13 46/15 46/18 59/7 60/25 62/12  62/13 63/16 69/7 69/19 71/19 72/6  72/18 73/4 74/5 74/6 77/20 77/22  80/22 81/6 81/20 85/5 85/10 86/4  86/24 90/17 107/7 151/18 152/12  213/2 232/14 232/16 232/19 232/21  233/11 241/13 247/9 247/19 250/4  250/7 250/11 250/14 250/17 250/24  260/1 260/4 260/7  recalls [1] 289/23  receive [1] 185/11  received [4] 177/1 177/16 293/11  294/23  recently [1] 213/4  recess [9] 34/13 91/21 95/2 105/20  105/22 163/3 163/25 255/8 255/9  recessed [1] 32/19  recesses [1] 32/1  recognition [1] 180/8  recognize [7] 19/12 22/25 47/23  149/20 256/1 269/15 274/14  recollection [5] 4/24 53/11 149/19  165/13 232/15  recon [1] 215/4  reconsider [1] 291/17  reconstructed [1] 94/20  reconstruction [23] 64/8 64/25 65/6  93/23 94/17 113/19 113/24 115/25  129/12 139/25 140/4 145/19 146/10</p>	<p>148/6 155/21 171/2 171/3 171/21  190/13 190/15 190/16 257/10 257/16  reconstructionist [3] 23/5 56/9 115/13  record [11] 126/9 147/15 211/25 263/1  270/2 279/4 289/17 289/18 291/13  309/12 311/13  recorded [1] 140/8  recorder [3] 139/15 215/7 243/1  recording [3] 52/9 147/10 243/3  records [22] 138/7 170/24 171/17  188/4 218/13 219/10 223/22 228/14  228/25 236/15 237/7 237/20 238/3  238/14 239/4 239/23 279/12 280/5  282/9 282/20 282/21 282/24  recover [1] 228/12  recross [5] 93/13 98/24 99/1 282/14  282/16  recruit [1] 228/17  recruiting [1] 279/7  rectified [1] 275/9  red [2] 22/20 209/21  redact [5] 9/5 9/12 9/14 9/15 10/16  redacted [4] 9/7 10/1 10/7 164/11  redactions [2] 11/11 11/13  redeploy [1] 193/22  redirect [8] 85/21 85/23 93/12 102/20  103/1 162/19 278/21 278/23  redo [1] 52/8  reduce [8] 44/1 85/3 98/18 144/6 145/7  145/14 149/9 298/11  reduced [1] 143/14  reducing [1] 143/3  reduction [1] 84/17  reductions [1] 11/13  reevaluate [1] 201/10  refer [2] 48/9 219/9  reference [4] 25/7 280/7 280/8 280/9  referenced [1] 268/12  referring [12] 43/19 44/5 60/18 61/4  79/23 80/5 83/23 85/5 267/25 280/11  280/15 280/20  reflect [3] 33/22 89/11 293/9  reflecting [1] 51/19  reflective [1] 73/25  refresh [2] 4/24 232/15  refusing [1] 291/14  refuted [2] 238/18 238/23  regard [14] 4/10 9/12 10/1 121/6 127/8  127/13 163/6 189/25 296/14 296/23  298/5 303/1 304/18 306/23  regarding [7] 200/11 201/22 221/12  257/9 266/22 281/21 291/25  Regardless [1] 82/7  regards [1] 306/12  Regional [1] 265/25  regret [1] 300/14  regular [3] 88/2 207/3 243/21  regularly [1] 246/23  regulation [2] 57/11 303/12  regulations [3] 56/25 57/2 312/10  regulatory [1] 56/21  reinforce [1] 96/8  reinforced [1] 82/19  reinforcement [6] 49/20 49/23 50/3  50/6 50/9 50/16  reinforces [1] 50/11  reinstating [1] 186/20  relate [2] 7/2 126/6  related [10] 88/10 108/12 126/3 126/5  129/10 133/7 159/13 248/9 269/17</p>	<p>299/1  relates [5] 7/5 7/4 95/24 127/5 301/9  relation [1] 181/23  relationships [2] 246/19 251/4  relative [3] 32/14 58/3 226/15  relatively [1] 59/15  relaxation [1] 18/24  release [6] 179/10 239/4 279/12  282/19 282/22 283/1  released [1] 46/15  relevance [3] 5/14 129/23 294/12  relevant [10] 4/25 9/1 117/25 126/25  127/9 166/15 166/25 167/3 167/16  295/17  relied [8] 108/5 129/24 139/24 148/5  190/15 201/2 209/13 212/19  relief [3] 107/16 109/3 109/7  relies [1] 79/17  relieves [1] 144/4  reluctant [1] 301/7  rely [7] 56/9 115/17 138/11 200/21  200/25 212/18 290/8  relying [1] 64/9  remain [3] 29/17 93/16 153/9  remained [1] 43/2  remaining [1] 290/23  remember [24] 4/21 5/21 30/2 32/25  42/18 47/25 60/12 60/22 61/2 64/10  66/22 76/22 77/21 100/19 102/20  138/17 155/22 156/11 163/11 164/16  164/18 232/11 232/14 235/20  remind [4] 11/19 48/10 161/1 210/9  remove [7] 79/8 79/11 92/19 141/8  309/8 309/16 309/25  removed [3] 222/15 287/13 310/6  removing [2] 90/3 309/19  rendered [2] 201/9 234/16  rendering [3] 193/14 200/11 212/5  renewed [3] 289/22 290/3 291/13  reoriented [1] 97/2  repeat [5] 24/12 55/12 109/25 211/22  247/11  repeatedly [2] 17/25 303/13  repeating [2] 204/14 219/6  reperfuse [1] 237/13  replace [1] 250/23  replaced [1] 104/5  report [60] 21/17 21/20 21/21 22/3 22/6  23/2 23/3 33/2 37/11 37/13 63/20 77/7  80/12 80/19 80/22 80/23 81/1 81/18  86/3 87/1 89/21 90/7 90/8 93/10  102/18 104/1 123/5 127/6 148/3 148/7  152/9 152/13 186/13 186/14 199/20  199/22 201/18 201/21 221/19 239/25  257/6 257/8 257/12 257/23 258/1  258/13 258/21 258/22 258/23 259/6  259/7 259/14 273/17 273/21 274/6  274/11 274/15 276/15 276/19 276/22  reported [2] 63/12 312/8  reporter [5] 110/16 168/15 312/1 312/4  312/19  reports [4] 188/10 200/18 221/18  276/21  represent [5] 94/14 95/20 141/23  158/23 269/4  representation [3] 5/11 107/25 213/12  representative [6] 42/17 79/24 94/5  167/12 186/8 282/25  represented [2] 108/5 213/6  representing [3] 14/4 149/17 273/13</p>
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R Case 4:23-cv-00088-CDL	Document 383 Filed 03/21/25 Page 349 of 363	
<p>reproduces [1] 21/17  reproduction [1] 90/6  request [11] 6/13 166/3 166/19 166/21 287/13 291/14 291/17 293/5 293/12 307/17 309/24  requested [1] 307/25  requests [3] 10/25 11/10 165/12  require [1] 146/23  required [4] 96/11 146/21 147/1 304/3  requirement [3] 97/16 292/7 292/8  requirements [4] 88/9 96/11 125/19 289/5  requires [2] 126/22 146/22  rescue [1] 178/18  research [21] 98/10 111/5 116/6 116/7 116/9 116/10 117/7 119/1 119/3 119/13 119/23 119/24 136/2 143/15 153/21 159/11 163/1 177/8 178/23 185/12 214/6  researcher [1] 178/6  researchers [1] 121/14  resemble [1] 103/4  reserves [1] 6/18  residence [3] 176/6 176/8 176/9  residency [2] 175/23 176/18  resolve [1] 270/4  resolved [2] 290/22 302/20  resolves [1] 302/19  resources [1] 269/16  respect [14] 97/23 171/8 197/5 201/9 203/8 212/1 217/9 224/4 224/20 250/17 279/21 281/1 290/1 290/4  respectfully [1] 260/21  respirations [2] 222/8 222/9  respiratory [1] 216/24  respond [6] 8/14 80/20 106/16 166/11 167/12 227/11  responded [1] 267/15  responder [2] 17/20 18/2  responders [3] 252/14 252/16 253/2  responding [1] 5/22  responds [2] 34/9 159/10  response [10] 13/6 80/22 164/10 165/12 166/2 166/3 166/13 166/14 290/9 290/16  responses [1] 167/13  responsibilities [1] 173/24  responsibility [3] 113/21 180/24 181/1  responsible [6] 174/1 181/15 295/25 296/1 296/15 296/25  rest [16] 9/1 33/22 35/3 44/16 65/8 66/12 68/23 93/9 105/5 195/5 195/5 215/16 283/21 284/4 287/25 290/4  restate [1] 170/7  restraint [40] 112/10 112/13 112/14 113/11 113/14 115/15 117/23 118/15 118/19 118/23 120/4 121/7 126/7 127/2 127/3 127/12 127/14 129/6 129/8 131/9 131/12 134/25 138/10 138/22 139/13 139/16 141/15 142/13 142/16 142/19 143/3 144/2 144/3 144/11 144/17 146/20 148/5 150/3 150/9 174/23  restraints [6] 112/22 126/3 126/5 127/4 127/9 129/1  restrict [1] 31/7  rests [1] 283/22  result [6] 34/20 56/3 92/6 143/15 163/17 264/4</p>	<p>resulted [2] 116/10 117/8  resulting [1] 85/8  results [7] 54/4 55/18 89/8 115/17 118/22 119/3 213/9  resume [5] 116/9 116/11 116/12 116/15 117/5  resumes [3] 116/19 116/22 163/6  retained [7] 127/16 187/8 232/3 247/8 247/18 247/24 279/15  retired [6] 113/16 113/18 158/10 238/2 306/24 307/7  retractable [1] 151/7  retractor [6] 132/11 140/25 143/7 145/20 146/11 146/15  retractors [1] 146/23  reversible [2] 165/9 165/11  review [18] 25/22 80/20 119/17 119/20 119/22 127/2 138/21 138/24 138/24 185/17 188/3 188/14 188/16 200/2 211/25 218/12 276/9 280/5  reviewed [21] 23/22 25/19 80/12 81/18 118/19 118/20 136/6 139/24 146/10 147/18 148/4 185/14 188/4 188/4 188/15 189/2 201/16 211/14 213/4 213/5 276/22  reviewing [1] 237/20  revised [2] 164/24 291/12  rhythm [2] 181/23 181/23  rhythms [1] 181/13  rib [16] 207/22 207/22 208/4 208/6 208/16 208/17 208/25 210/15 211/11 211/13 212/6 225/4 225/4 227/3 230/10 230/15  ribs [9] 208/24 208/24 209/2 210/8 230/14 231/2 252/10 253/10 254/2  Richmond [2] 179/6 179/7  rid [2] 34/24 148/14  ride [1] 141/14  rides [1] 39/8  right [266] 6/18 9/18 11/13 11/15 14/6 15/10 17/13 20/16 20/19 20/21 20/22 21/4 23/12 23/15 24/11 27/9 29/7 32/3 32/23 33/7 33/15 33/20 34/2 34/4 34/4 34/15 34/21 35/6 35/10 36/11 37/20 40/14 41/15 41/18 41/24 42/9 42/24 43/1 44/13 44/18 44/21 44/23 45/13 46/11 47/14 47/19 47/20 48/1 48/11 48/15 48/18 48/20 49/14 50/16 51/1 51/12 52/1 52/15 52/17 53/17 53/19 54/3 54/10 54/15 55/7 56/9 57/2 57/7 60/7 61/22 61/25 62/3 62/11 62/24 63/5 63/19 63/22 64/21 65/1 65/2 67/16 67/20 67/23 69/6 69/18 69/20 70/3 71/4 71/18 72/2 72/21 75/5 75/11 75/25 77/4 78/15 81/7 82/3 82/16 82/19 82/25 83/5 83/11 83/19 84/5 85/14 85/18 86/2 86/8 88/12 89/2 89/24 90/8 90/13 91/10 94/1 95/11 95/18 96/2 99/14 100/6 100/24 101/10 103/14 104/19 105/2 105/10 109/10 110/9 110/9 125/1 125/9 127/21 134/8 135/20 135/23 137/19 137/22 137/25 140/15 140/16 141/18 142/8 142/10 148/25 149/1 149/4 150/7 152/6 152/23 155/3 155/7 155/24 156/3 156/15 156/16 157/5 157/23 158/13 159/2 159/16 159/18 159/19 159/23 160/5 160/8 160/19 160/23 161/7 161/11 161/15 162/3 162/21 163/19 163/23 165/21 168/5 168/7 168/7</p>	<p>168/18 169/14 175/14 178/25 182/25 184/9 193/1 194/11 194/24 195/17 195/17 195/22 195/24 196/1 196/3 196/4 198/20 199/10 201/3 201/6 202/10 203/10 203/11 207/13 208/1 208/5 208/9 208/15 208/24 209/20 209/23 210/13 210/14 210/14 210/15 211/5 212/17 214/4 214/12 215/12 217/1 217/3 218/3 218/15 222/1 222/1 222/23 225/19 225/22 226/19 227/8 230/4 238/6 240/23 241/17 242/13 243/1 248/24 250/23 252/19 260/1 262/21 263/2 265/24 271/22 274/9 274/19 276/20 278/20 281/1 283/19 283/22 284/2 289/9 289/17 290/9 291/4 291/22 300/2 301/1 302/13 302/15 302/25 306/1 306/11 309/11 311/8  right-hand [1] 89/24  righted [7] 15/7 15/9 15/24 29/23 33/8 198/16 200/6  righting [1] 18/13  rigid [2] 27/9 188/19  rigidified [1] 104/20  ring [3] 154/18 155/14 295/12  rise [5] 4/3 105/24 164/2 255/11 311/10  rises [1] 304/7  rising [1] 90/25  risk [16] 41/2 43/11 44/2 44/10 84/17 98/18 143/3 144/6 217/13 220/1 220/6 220/17 238/17 239/18 281/7 294/22  risks [1] 149/9  road [25] 86/16 147/21 147/24 148/11 148/13 148/16 149/2 171/5 186/12 190/17 215/1 215/12 215/12 218/19 243/13 277/22 281/18 281/22 296/20 298/9 298/16 299/1 299/9 299/12 299/16  roads [1] 186/11  roadway [1] 191/7  robust [1] 197/7  ROCS [3] 78/18 78/21 79/5  ROGER [10] 3/3 108/22 110/6 110/17 110/19 159/1 159/9 159/12 159/19 159/22  role [8] 42/19 49/3 50/3 113/25 115/12 174/8 189/10 189/12  roles [2] 85/7 111/10  roll [5] 43/12 68/8 96/8 96/24 103/17  rolled [5] 16/16 18/3 68/4 160/10 254/5  rolling [1] 58/16  rollover [36] 12/15 39/13 40/12 44/11 58/16 59/11 59/16 59/25 68/3 68/9 68/10 68/11 79/20 80/10 80/10 83/10 84/18 84/24 95/15 97/18 98/19 100/15 101/20 101/21 101/22 101/23 101/24 102/10 117/24 131/20 140/22 191/4 191/5 281/15 281/16 281/17  rollovers [1] 5/18  rolls [2] 191/7 281/17  roof [285] 5/3 5/19 6/20 7/2 7/20 8/2 15/14 15/17 16/17 16/24 16/25 17/2 17/6 17/9 17/10 17/12 17/14 17/15 18/12 18/19 18/19 18/24 19/6 19/10 21/1 22/7 22/16 22/21 23/14 24/1 24/11 24/13 25/12 25/24 26/14 26/16 26/17 26/24 26/25 27/4 27/8 27/14 27/15 27/17 27/20 27/21 28/2 28/9 28/17 28/17 29/2 29/2 29/19 30/5 30/7</p>

R Case 4:23-cv-00088-CDL	S Document 383 Filed 03/21/25 Page 350 of 362	
<p>roof... [230] 30/16 31/19 31/23 32/11 32/19 34/5 34/9 34/18 34/19 35/13 35/15 35/15 35/25 37/24 38/5 38/11 38/11 38/12 38/13 38/15 38/15 38/16 38/21 40/22 42/22 42/24 42/25 43/1 43/2 43/4 43/11 43/20 43/24 44/9 44/15 44/16 46/8 46/8 46/24 47/17 47/20 47/24 48/13 48/25 49/1 49/18 50/19 50/22 50/24 51/3 51/4 51/5 51/8 51/12 52/17 52/24 53/5 53/19 53/25 54/12 54/20 54/23 55/16 55/22 56/9 57/22 58/2 61/20 61/22 62/6 62/13 62/15 63/12 64/2 64/13 64/15 64/22 65/5 65/8 65/17 65/17 65/18 65/19 65/20 65/24 65/24 66/3 66/11 66/14 66/21 67/13 67/18 68/13 69/2 69/3 69/20 69/22 70/6 70/8 70/9 70/23 71/2 71/20 72/4 73/17 73/18 74/2 74/20 74/22 75/1 76/13 77/15 77/24 78/9 78/19 79/1 79/4 79/6 79/8 79/18 81/20 82/12 82/25 83/25 84/12 84/16 87/3 87/5 87/8 87/14 87/19 88/9 88/11 88/15 88/22 89/5 89/11 90/16 90/23 90/25 91/3 91/7 91/11 94/12 94/22 97/15 98/4 98/6 98/6 98/17 100/21 101/10 101/16 101/18 103/20 104/25 105/1 105/7 116/1 123/6 126/24 127/13 127/15 149/21 150/1 150/3 150/6 150/8 156/18 156/21 157/6 157/13 157/14 170/5 170/9 170/21 171/15 184/12 191/3 198/10 208/14 209/7 222/1 222/23 224/15 229/13 229/17 230/3 251/18 251/20 251/21 252/1 252/7 252/9 253/1 253/7 253/9 254/2 259/20 259/24 260/1 260/4 260/11 260/13 260/14 260/23 260/25 263/7 263/9 263/16 263/18 263/21 263/23 263/24 263/25 264/4 267/6 267/14 267/20 267/20 267/22 280/22 286/8 298/6 298/23 299/5 299/25 303/15 304/20 305/20</p> <p>roofs [3] 55/25 67/6 84/23</p> <p>room [28] 176/3 178/20 179/24 180/3 180/13 185/6 185/8 199/17 202/11 202/14 202/15 205/21 222/4 222/11 222/12 222/17 230/10 237/8 253/17 253/23 253/23 253/25 254/9 255/7 260/10 260/22 287/9 296/5</p> <p>rotate [1] 226/14</p> <p>rotated [1] 173/8</p> <p>rotation [2] 173/12 264/7</p> <p>rotational [1] 64/17</p> <p>roughly [2] 48/8 117/15</p> <p>routed [3] 113/21 137/18 155/5</p> <p>routing [2] 138/3 150/14</p> <p>rule [12] 83/24 84/7 85/11 163/13 203/10 258/19 289/24 290/17 291/3 291/23 292/1 292/11</p> <p>ruled [2] 164/15 164/20</p> <p>rules [4] 239/3 251/14 251/15 311/6</p> <p>ruling [4] 159/7 164/18 289/25 291/1</p> <p>rulings [1] 307/14</p> <p>run [11] 23/15 51/5 68/1 103/23 121/2 123/23 130/11 130/17 131/21 215/24 294/24</p> <p>running [6] 124/16 124/25 174/7 178/9 299/9 299/11</p> <p>runs [6] 29/10 48/13 160/9 183/6 184/4 208/20</p>	<p>S-O-C-H-O-R [1] 168/17</p> <p>SAE [1] 119/15</p> <p>safe [7] 43/5 43/21 87/8 87/14 87/19 99/11 150/6</p> <p>safeties [1] 149/5</p> <p>safety [38] 44/1 53/25 57/15 81/9 83/25 99/4 99/16 99/20 99/21 104/17 113/12 113/23 117/22 125/16 125/18 141/25 146/7 146/17 146/20 147/3 147/4 161/17 161/21 162/1 172/13 173/15 173/16 173/18 173/21 173/22 176/16 176/21 176/24 178/7 285/13 285/14 303/3 304/20</p> <p>said [94] 5/4 5/7 8/4 13/14 16/23 17/17 19/8 24/15 25/2 25/15 30/9 39/17 40/6 43/4 43/14 44/12 48/15 53/1 55/23 66/9 72/23 74/24 79/19 81/15 104/13 107/24 136/1 142/6 143/2 156/19 158/1 163/15 163/16 170/5 170/9 171/25 184/21 190/11 191/19 191/20 192/3 196/17 197/24 201/25 204/11 211/22 211/23 212/24 213/10 214/2 214/20 216/11 216/13 221/8 221/14 223/19 225/9 232/14 235/21 235/21 239/10 240/11 243/11 244/10 247/8 247/17 250/21 251/5 251/12 251/22 253/15 254/7 258/13 258/18 258/21 260/1 262/1 263/10 263/24 264/6 266/9 266/17 268/7 268/8 269/21 274/9 276/9 276/11 276/12 284/24 285/2 285/12 292/4 302/9</p> <p>sake [1] 100/21</p> <p>Sal [4] 47/24 48/23 49/18 50/19</p> <p>sale [2] 55/8 125/4</p> <p>same [62] 6/11 12/3 29/17 29/19 30/7 34/4 39/25 42/24 43/1 43/8 46/8 48/15 54/24 55/14 64/2 64/2 64/3 65/20 66/11 68/14 77/4 77/5 81/23 82/8 82/18 83/9 83/11 84/10 96/22 97/1 97/12 98/15 101/7 101/8 101/16 103/10 107/5 124/14 124/15 126/19 126/23 130/13 142/6 145/5 156/16 162/17 163/6 163/15 164/11 166/19 170/23 173/10 174/14 202/25 204/11 216/2 223/23 255/15 281/14 284/10 287/1 307/15</p> <p>Sanchez [2] 151/17 251/24</p> <p>sandwiches [1] 288/25</p> <p>sat [4] 18/15 70/23 71/1 290/18</p> <p>satisfy [1] 67/7</p> <p>save [3] 18/8 57/18 84/23</p> <p>saving [1] 184/10</p> <p>savings [2] 49/11 53/3</p> <p>saw [26] 13/9 21/21 25/17 28/12 29/22 59/23 72/20 81/4 101/7 101/8 132/20 134/21 197/9 197/10 199/4 206/13 208/12 218/13 229/25 253/22 281/11 283/8 284/21 286/14 286/15 301/18</p> <p>say [103] 8/2 8/3 13/12 15/1 16/13 18/11 21/13 24/7 24/15 26/6 26/9 27/9 27/16 31/8 31/11 34/7 35/5 35/6 35/19 41/19 41/22 43/20 44/17 44/18 46/10 55/19 56/20 57/5 57/21 58/3 58/10 58/21 60/18 71/24 75/13 77/23 78/1 78/18 79/17 84/8 84/23 85/2 86/10 92/7 94/14 96/16 98/14 99/3 101/5 101/13 109/1 129/24 138/12 147/16 149/21 150/6 150/17 152/24 156/5 156/15 161/8 166/23 169/19 175/17</p>	<p>175/18 184/12 184/25 186/12 193/23 196/18 199/14 201/4 201/5 203/12 205/17 206/25 213/23 215/21 219/23 219/24 221/13 224/19 226/22 235/17 238/20 253/15 254/15 258/18 266/17 276/3 293/16 294/7 295/1 295/11 295/12 295/13 296/5 297/15 300/2 300/6 300/16 306/10 310/21</p> <p>saying [37] 14/2 23/16 24/4 24/13 24/20 25/4 34/20 34/25 39/12 40/16 41/9 44/19 56/25 57/9 57/11 58/19 69/2 83/24 84/4 85/10 99/10 103/8 103/23 104/15 104/18 136/19 153/19 156/5 157/18 176/25 194/10 212/20 219/13 240/1 250/14 281/1 304/14</p> <p>says [45] 4/18 6/19 6/22 14/20 43/13 48/3 48/4 48/19 54/9 69/11 69/14 70/7 71/22 74/2 81/12 82/1 88/4 97/14 97/20 97/23 106/6 108/15 159/7 159/19 160/1 166/16 166/21 167/13 186/14 189/20 215/21 215/23 216/4 216/18 217/25 223/14 250/14 287/4 295/24 303/23 304/7 305/16 305/17 305/23 309/4</p> <p>SC [2] 50/22 50/24</p> <p>SC/CC [2] 50/22 50/24</p> <p>scale [14] 28/23 30/3 31/5 31/8 87/8 129/6 184/1 184/4 184/4 184/15 213/16 227/6 231/5 274/2</p> <p>scaling [1] 186/24</p> <p>scan [8] 21/25 22/2 22/10 33/13 33/16 210/11 214/10 277/3</p> <p>scanning [1] 182/14</p> <p>scans [5] 15/16 178/4 210/20 210/20 211/13</p> <p>scenario [1] 253/16</p> <p>scenarios [1] 33/21</p> <p>scene [51] 18/3 23/22 23/25 24/17 25/9 25/17 25/19 26/4 40/22 40/24 102/15 102/16 138/12 138/15 138/15 151/9 151/11 152/1 171/13 171/19 179/9 188/7 198/15 198/17 198/20 199/6 199/16 200/5 200/9 201/1 205/5 205/13 206/12 206/13 215/10 215/18 221/25 222/7 229/23 230/4 230/5 252/14 253/8 253/19 254/10 254/18 257/10 257/16 260/15 280/24 285/19</p> <p>schedule [1] 239/5</p> <p>school [13] 28/21 67/4 71/16 169/8 172/8 172/9 172/14 172/22 175/20 175/22 175/23 245/19 246/2</p> <p>SCI [1] 177/13</p> <p>science [2] 43/13 98/20</p> <p>sclera [3] 223/8 223/8 223/14</p> <p>scope [1] 156/24</p> <p>score [5] 184/25 185/2 273/24 274/7 274/25</p> <p>scratch [7] 133/19 134/3 135/10 135/14 152/21 152/24 153/9</p> <p>scratches [4] 133/23 134/9 134/11 134/17</p> <p>screen [18] 102/22 102/23 133/22 191/14 191/14 200/16 204/3 204/20 204/23 235/2 260/25 261/8 261/17 262/17 262/23 262/25 270/21 272/22</p> <p>screens [1] 195/16</p> <p>scroll [1] 205/1</p> <p>SDS [5] 128/12 128/13 128/16 128/21 129/1</p> <p>se [2] 6/16 7/3</p>



<p>S Case 4:23-cv-00088-CDL  seal [1] 21/3  search [1] 302/5  seat [22] 41/18 110/15 132/7 141/20  143/21 143/22 143/24 145/13 154/17  155/14 199/11 199/14 199/17 200/7  203/17 234/10 234/17 234/22 248/15  249/9 249/18 251/21  seatbelt [53] 122/21 123/7 131/15  132/4 132/8 132/10 132/12 132/14  133/9 133/10 133/12 133/14 133/16  134/1 134/4 136/5 138/2 138/13  140/24 140/25 141/6 141/7 141/8  142/14 142/18 143/6 145/20 146/8  146/23 150/10 150/15 155/18 234/24  235/3 235/7 235/8 235/12 284/19  284/22 285/25 293/14 293/21 293/24  294/7 294/22 295/14 295/17 297/5  298/10 298/18 299/1 299/13 299/20  seatbelted [1] 207/17  seatbelts [17] 122/19 126/24 128/13  128/14 128/16 138/10 142/21 150/23  184/7 194/5 285/7 293/11 294/10  294/19 295/8 295/21 300/7  seated [8] 4/6 144/13 164/4 168/13  203/9 203/10 207/3 289/19  seats [2] 112/22 234/4  second [31] 4/15 8/14 25/3 39/7  102/24 113/6 113/8 117/11 117/13  130/16 130/19 130/20 141/17 141/24  142/1 148/24 174/22 190/25 193/18  193/20 193/25 194/3 194/14 195/6  216/8 235/19 235/21 264/10 281/11  305/13 308/17  second-floor [1] 235/21  Secondly [1] 292/9  seconds [7] 147/12 147/20 147/21  171/5 215/8 216/10 216/11  section [7] 88/6 89/9 90/21 117/5 181/2  301/14 312/6  see [163] 4/17 10/21 15/13 19/20 20/9  20/23 20/24 21/7 22/16 23/2 23/13  24/22 24/22 28/22 34/1 34/2 35/11  35/25 37/25 39/2 40/21 41/18 41/20  42/1 42/3 42/8 42/11 47/9 48/5 48/23  49/8 49/9 49/12 49/18 49/21 50/20  55/20 59/25 60/6 69/10 69/22 70/6  71/8 71/20 71/25 72/14 77/3 86/16  91/7 92/13 94/6 94/18 96/5 102/1  102/2 102/4 104/1 104/23 109/1  128/19 130/7 130/20 130/22 131/13  131/14 133/23 134/3 135/22 139/17  143/23 152/10 154/5 154/9 154/14  154/15 155/6 158/25 159/4 159/14  163/2 174/12 174/13 178/7 180/4  182/17 192/19 192/22 192/23 193/2  193/14 197/11 197/25 198/25 199/5  199/5 199/9 199/20 202/6 202/9  202/10 203/20 205/3 205/8 205/10  207/1 207/18 207/19 209/3 209/6  209/18 209/21 209/24 209/25 210/2  210/5 211/15 212/11 212/12 212/13  214/2 214/12 215/5 215/7 215/11  219/10 222/25 223/3 223/6 223/9  223/12 223/13 223/15 223/17 226/13  227/2 227/17 229/3 229/3 230/13  233/9 243/6 253/2 253/4 253/5 261/12  261/21 262/14 267/7 269/8 270/21  272/22 272/23 273/6 280/23 281/9  281/12 284/8 284/18 289/14 296/10</p>	<p>301/17 302/4 311/8  seeing [1] 23/5 69/7 73/4 74/5 136/6  130/21 155/22 190/13 192/12 251/25  252/2  seeking [3] 131/3 298/2 299/4  seem [1] 260/18  seems [3] 7/7 202/24 250/21  seen [35] 15/19 23/8 28/10 32/17 37/9  37/13 37/14 42/7 48/2 49/3 52/9 53/10  54/19 55/22 69/5 69/17 72/24 73/24  74/2 74/4 77/18 95/9 106/7 158/22  192/10 200/1 204/8 212/25 213/11  252/24 278/17 279/22 282/24 285/24  301/13  sees [3] 58/16 59/22 97/19  selected [1] 129/16  sell [7] 57/4 96/14 100/4 125/12 126/1  126/1 309/6  selling [5] 46/13 51/15 54/18 54/23  279/5  send [7] 10/5 35/21 164/24 166/20  167/4 186/13 295/21  sense [10] 65/3 193/3 225/21 225/24  226/5 226/6 226/7 238/23 251/6  304/13  sensed [2] 142/3 146/5  sensors [2] 145/25 146/1  sent [1] 106/14  sentence [11] 305/10 306/22 308/14  308/17 309/3 309/4 309/8 309/16  309/19 309/20 309/21  sentences [1] 308/7  separate [1] 161/20  September [2] 49/6 72/2  serious [18] 5/3 180/5 213/24 213/25  213/25 270/23 271/1 271/5 271/8  271/11 271/13 271/25 272/2 273/11  274/3 275/4 281/5 309/7  serous [1] 85/9  serries [1] 182/19  serve [1] 121/17  served [7] 257/5 258/13 266/21 266/23  273/17 276/15 276/19  service [2] 10/16 10/16  services [2] 111/10 123/1  session [3] 4/5 105/25 164/3  set [8] 123/22 123/22 128/11 143/12  145/6 174/15 178/9 212/21  setting [1] 114/19  seven [4] 196/1 196/2 209/18 249/22  seventh [1] 208/6  several [3] 25/9 185/23 279/23  severe [6] 85/4 130/11 143/8 149/8  149/9 213/17  severity [6] 129/14 184/25 185/2  194/13 213/16 273/25  shall [2] 110/12 168/10  shape [5] 90/16 92/4 94/25 154/16  155/14  share [4] 10/4 98/15 115/18 144/16  shared [1] 98/16  sharing [2] 119/2 119/12  she [190] 40/6 40/6 45/18 72/23 72/24  73/1 73/5 134/15 150/12 150/18  151/14 170/25 171/6 192/3 192/5  193/7 193/9 196/4 196/5 196/14  196/15 196/15 196/24 197/10 197/12  202/6 203/18 203/18 203/19 203/20  205/10 205/17 205/18 205/19 205/22  205/22 207/3 207/8 207/17 207/20</p>	<p>207/21 207/22 207/24 207/24 207/25  207/25 208/1 208/1 208/3 208/3 208/8  208/10 208/10 208/11 208/15 209/8  217/16 217/16 217/17 217/17 217/24  218/8 219/10 219/13 219/17 219/20  220/3 220/5 220/5 220/19 220/22  221/2 222/3 222/9 222/11 222/11  222/12 222/12 222/17 222/21 223/2  223/2 223/3 223/20 223/25 223/25  224/6 224/9 235/8 236/2 239/18  239/21 240/16 241/7 241/13 241/14  242/6 242/6 242/7 242/12 242/25  243/2 243/4 243/14 243/17 243/18  243/20 243/20 247/7 247/16 251/8  251/12 251/12 252/8 252/8 252/12  253/10 253/12 253/12 253/24 254/2  254/3 254/5 254/6 254/8 254/14  254/15 254/16 254/17 254/18 254/20  256/20 274/10 274/11 277/7 279/24  282/5 282/6 284/24 293/9 293/21  293/22 293/22 293/23 293/24 294/1  294/1 294/6 294/7 294/14 295/9  295/10 295/18 296/1 296/2 296/4  296/9 296/19 296/24 297/4 297/10  297/10 297/13 297/14 297/16 297/18  297/19 297/19 297/23 297/24 298/2  298/8 298/9 298/14 298/15 298/17  298/19 298/20 298/23 299/8 299/9  299/11 299/12 299/12 299/15 299/18  299/19 299/25 310/18 310/19  she's [25] 14/4 193/9 207/4 217/14  217/15 219/15 219/24 220/7 220/10  220/16 220/18 220/18 220/20 220/20  222/2 223/12 240/4 240/4 241/4  242/12 242/13 252/9 253/9 253/24  296/8  sheet [1] 233/8  shift [1] 180/18  shifting [1] 16/21  short [2] 79/15 278/22  shortening [1] 29/18  shorter [5] 28/18 29/15 30/22 31/19  31/22  shortly [3] 164/25 189/5 299/18  shot [2] 106/17 193/21  should [32] 7/15 31/13 31/14 33/2  58/20 72/12 107/4 109/14 109/19  109/23 134/16 140/13 147/24 148/11  148/15 151/4 237/24 269/6 271/24  273/10 278/15 279/9 288/5 288/16  289/10 290/24 298/11 299/13 303/11  303/17 304/4 305/6  shoulder [17] 133/11 134/16 134/20  134/22 134/22 134/22 135/13 135/13  138/6 138/6 150/13 150/14 150/18  150/24 151/7 193/1 193/6  shouldn't [3] 127/19 136/23 164/17  show [28] 4/19 8/9 9/16 10/17 37/10  39/14 43/10 91/22 92/20 102/18  116/22 129/20 137/8 171/12 191/22  192/7 203/24 204/18 206/9 206/22  214/12 217/7 242/23 256/10 262/3  270/9 287/17 295/9  showed [11] 11/6 11/12 11/13 39/11  63/2 86/3 95/5 101/9 138/12 163/17  235/2  showing [10] 68/6 94/8 190/14 197/2  209/17 270/7 270/11 272/10 278/16  287/3  shown [13] 137/12 139/3 140/3 141/23</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------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<p>S shown... [9] 145/19 155/22 164/18 206/17 207/20 224/22 272/9 288/4 288/4</p> <p>shows [7] 102/19 190/21 193/15 203/22 206/10 207/2 262/25</p> <p>sick [1] 184/23</p> <p>side [106] 16/10 16/12 17/4 17/7 17/8 17/8 17/12 17/17 18/12 18/14 18/15 18/18 18/21 19/13 19/17 21/1 21/12 22/12 22/13 22/16 22/16 24/21 26/19 26/21 26/21 26/22 27/23 28/1 28/2 30/4 30/6 30/10 30/13 30/20 31/14 32/18 32/19 34/12 35/9 35/16 35/17 35/24 41/16 41/23 42/24 48/3 51/4 51/4 51/5 51/5 51/6 64/18 64/19 64/20 64/21 64/24 67/22 67/23 68/1 89/24 90/24 91/24 97/1 97/3 97/9 101/13 102/2 102/3 122/24 131/19 137/4 139/18 139/21 140/17 140/18 140/21 141/21 142/4 142/4 142/4 142/6 156/1 156/1 166/9 166/20 167/5 167/9 167/11 172/19 175/3 177/24 184/11 184/11 200/16 208/9 209/19 209/20 210/15 225/17 225/17 226/1 253/4 253/5 254/5 279/17 288/5</p> <p>side-impact [1] 141/21</p> <p>sides [3] 17/1 33/6 304/24</p> <p>sideways [8] 32/17 34/11 68/4 68/8 92/5 92/7 96/24 149/4</p> <p>sight [1] 216/13</p> <p>sign [16] 45/12 45/22 46/22 47/19 51/19 51/24 51/25 54/7 55/8 55/15 72/21 73/21 138/2 167/12 167/13 279/12</p> <p>signature [5] 10/15 10/17 256/2 256/21 256/22</p> <p>signatures [2] 10/9 10/12</p> <p>signed [3] 54/18 273/20 283/1</p> <p>significance [1] 302/12</p> <p>significant [1] 229/19</p> <p>significantly [1] 301/12</p> <p>signs [2] 45/9 227/1</p> <p>Silverado [2] 76/23 77/10</p> <p>similar [10] 115/23 116/3 119/12 129/14 129/16 130/8 130/12 176/7 224/20 233/5</p> <p>similarity [1] 114/11</p> <p>simple [2] 182/23 299/15</p> <p>simplicity [1] 62/8</p> <p>simplified [1] 165/7</p> <p>simplifies [1] 121/4</p> <p>simply [15] 13/17 16/15 29/12 31/7 40/20 59/10 75/6 76/1 92/22 105/1 212/19 222/18 254/8 294/7 308/17</p> <p>simulate [5] 93/23 94/19 101/22 174/17 203/12</p> <p>simulating [2] 47/11 81/13</p> <p>simulation [2] 47/10 93/22</p> <p>simultaneously [1] 67/13</p> <p>since [13] 13/19 14/14 81/7 81/9 108/16 112/9 118/4 158/10 176/9 192/22 197/15 221/14 275/2</p> <p>sincerely [1] 300/15</p> <p>single [2] 46/23 122/17</p> <p>sinus [2] 181/23 181/23</p> <p>sir [72] 7/16 8/12 81/11 108/25 137/16 151/9 161/1 162/21 164/7 164/23 168/5 168/13 231/23 233/4 233/7 234/1 234/13 235/4 235/7 235/10</p>	<p>235/14 235/17 236/3 236/19 236/25 236/25 237/17 238/4 238/16 242/4 242/8 242/17 242/21 243/10 243/19 244/2 245/23 247/8 248/21 249/20 250/10 251/7 251/17 254/10 254/19 258/4 258/17 259/18 259/23 260/2 260/21 263/7 263/14 265/8 266/6 267/4 267/23 268/2 273/15 275/18 283/19 283/24 284/12 284/20 284/23 286/20 287/21 291/7 291/11 291/15 306/16 309/14</p> <p>sit [14] 53/9 53/13 59/7 63/18 74/11 76/24 77/1 77/22 83/13 104/11 185/23 186/7 200/20 283/5</p> <p>site [4] 15/14 15/18 15/19 35/22</p> <p>sitting [17] 18/18 19/14 20/14 20/16 21/4 21/4 21/18 21/24 23/6 23/7 29/24 38/10 104/8 198/6 203/14 237/18 290/20</p> <p>situated [2] 110/15 168/14</p> <p>situation [1] 138/18</p> <p>six [14] 112/17 112/21 157/9 172/12 184/4 186/16 196/2 208/5 213/22 234/11 260/5 274/2 274/3 280/14</p> <p>six-month [1] 112/21</p> <p>six-year [1] 157/9</p> <p>size [3] 173/24 219/25 286/12</p> <p>sizes [2] 122/3 122/3</p> <p>sketch [1] 31/8</p> <p>sketches [1] 80/19</p> <p>skin [6] 212/11 212/12 212/12 213/11 214/4 214/20</p> <p>skip [1] 7/25</p> <p>skipped [1] 7/21</p> <p>skull [5] 216/22 226/15 227/16 227/18 264/7</p> <p>slap [1] 107/15</p> <p>sled [6] 173/23 174/6 174/8 174/13 174/19 178/16</p> <p>sleep [1] 228/22</p> <p>slice [1] 209/20</p> <p>slices [1] 214/11</p> <p>slicing [1] 210/12</p> <p>slide [1] 92/20</p> <p>sliding [1] 149/4</p> <p>slight [2] 47/21 208/12</p> <p>slightly [2] 64/23 219/23</p> <p>slopes [1] 260/16</p> <p>slopped [1] 144/12</p> <p>slow [7] 130/15 130/18 130/22 130/23 131/10 131/13 143/14</p> <p>slow-motion [2] 130/23 131/10</p> <p>small [7] 51/23 56/4 111/2 113/14 128/6 139/12 197/2</p> <p>smaller [3] 67/20 220/11 227/20</p> <p>smallest [1] 129/7</p> <p>smart [2] 38/21 215/22</p> <p>smear [1] 133/19</p> <p>Smith [1] 186/14</p> <p>smoker [1] 230/19</p> <p>smokes [1] 220/5</p> <p>smoking [1] 220/6</p> <p>snow [1] 148/19</p> <p>so [419]</p> <p>so-called [3] 78/18 242/11 242/23</p> <p>SOCHOR [53] 3/6 168/4 168/5 168/16 168/20 168/25 171/23 174/20 178/10 186/1 186/22 187/4 190/12 191/20 193/17 194/10 198/23 200/1 201/2 202/4 204/20 204/22 206/7 206/21</p>	<p>210/19 210/22 211/4 211/25 212/16 212/23 218/23 219/5 220/24 224/3 226/2 229/10 230/9 231/13 234/23 239/10 244/9 255/24 256/16 257/1 257/2 262/8 262/14 269/15 270/16 274/20 274/24 275/18 278/25</p> <p>Sochor's [4] 267/9 268/15 278/12 287/3</p> <p>Society [2] 119/6 185/23</p> <p>soft [5] 212/25 213/10 214/2 214/3 214/24</p> <p>soften [1] 133/18</p> <p>softened [2] 134/5 152/21</p> <p>sold [7] 46/14 46/19 46/22 125/3 125/7 125/20 234/18</p> <p>solde [1] 57/4</p> <p>sole [2] 296/5 296/9</p> <p>solely [1] 289/12</p> <p>solemnly [2] 110/11 168/9</p> <p>solution [1] 295/3</p> <p>solved [1] 11/11</p> <p>some [93] 8/21 18/24 18/24 23/19 28/10 30/19 31/16 34/7 37/7 42/14 45/9 46/4 47/20 47/21 47/21 52/6 52/9 53/19 55/11 59/14 60/8 71/24 73/22 78/13 78/16 79/16 81/7 90/16 92/4 92/25 101/18 102/24 108/6 109/18 109/24 115/8 116/9 117/23 117/24 118/1 120/22 123/11 124/3 124/3 124/4 124/22 132/4 136/2 142/15 143/10 143/11 144/2 144/4 144/16 157/19 158/24 161/16 163/7 172/23 182/13 185/16 188/12 192/6 195/2 195/3 195/9 198/2 199/19 199/20 201/13 202/16 204/9 208/1 208/4 209/5 209/6 209/12 220/20 222/7 225/4 226/8 226/8 226/10 226/15 226/16 226/16 227/1 228/16 230/14 233/18 238/12 263/9 288/25</p> <p>somebody [20] 4/17 11/8 17/24 40/16 123/10 181/4 181/25 184/5 193/3 197/8 199/6 199/12 199/12 203/2 240/20 241/16 253/5 260/16 279/5 301/15</p> <p>somebody's [1] 167/15</p> <p>somehow [9] 5/17 28/18 29/5 35/21 108/12 156/6 254/6 295/9 307/8</p> <p>someone [18] 11/13 14/13 18/3 38/12 38/14 39/1 39/6 40/10 69/12 70/8 75/22 138/4 148/10 148/16 166/7 203/7 213/6 230/9</p> <p>something [62] 13/8 16/19 17/24 21/11 29/22 30/4 30/14 31/3 33/18 36/21 43/4 53/9 56/19 59/19 62/2 63/2 66/24 69/12 78/21 82/22 84/4 92/7 92/8 106/2 115/23 128/11 139/19 141/3 141/22 142/15 146/5 149/9 152/8 161/3 165/2 165/15 167/1 175/13 176/7 184/25 191/21 196/20 201/12 206/25 208/23 223/17 227/15 230/21 262/2 268/6 280/3 286/14 292/25 293/12 301/2 301/4 302/22 304/4 305/6 308/21 309/12 309/17</p> <p>sometimes [12] 15/21 67/2 146/4 161/20 161/20 182/9 198/21 223/6 230/16 258/8 258/9 305/12</p> <p>somewhat [2] 5/23 8/5</p> <p>somewhere [6] 20/21 20/22 43/17 56/12 142/2 156/3</p> <p>son [1] 234/16</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------



<p>S Case 4:23-cv-00088-CDL  sons [1] 282/18  sorry [14] 19/24 40/12 59/9 80/2 99/15  101/12 102/23 122/12 160/3 180/23  212/15 247/11 254/25 262/11  sort [5] 92/23 113/22 120/1 144/12  298/13  sorted [1] 255/14  sound [5] 62/2 63/19 84/5 159/16  194/18  sounded [1] 264/12  sounds [6] 136/17 157/5 222/7 227/11  276/20 304/12  Southwest [1] 244/4  space [12] 47/19 85/7 174/13 190/5  193/16 198/13 199/15 199/23 200/10  201/5 207/5 207/8  span [1] 157/9  speak [1] 41/14  speaking [3] 12/13 38/16 230/8  special [1] 177/12  specializes [1] 183/16  species [1] 47/1  specific [11] 7/19 42/5 52/1 69/7 71/19  77/16 77/20 85/5 156/14 310/23 311/2  specifically [12] 22/9 24/6 25/2 43/19  44/5 46/16 46/18 78/22 81/15 151/17  152/12 214/1  specification [2] 128/12 132/4  specifications [1] 128/23  specifics [4] 24/3 24/19 24/24 25/15  speculate [2] 78/14 295/8  speculation [2] 285/2 285/3  sped [2] 301/12 302/9  speed [5] 123/18 130/10 130/17  148/14 175/14  spell [2] 110/16 168/14  spend [2] 99/6 177/11  spent [3] 112/17 114/6 161/13  spilt [1] 291/10  spinal [2] 252/11 253/11  spine [10] 84/21 195/12 196/9 197/3  207/23 208/19 208/20 209/17 216/23  229/24  spinous [5] 195/25 198/10 207/24  208/2 209/22  spleen [3] 225/7 225/9 225/10  splenic [3] 225/13 225/13 225/14  split [1] 218/1  sponsor [1] 99/19  sponsored [1] 57/17  spool [3] 141/1 143/7 145/22  spread [3] 144/18 196/10 218/6  spreading [1] 218/3  spreads [1] 144/5  spring [2] 18/24 19/2  SQR [1] 1/25  squad [2] 178/18 178/19  square [1] 210/5  squeezed [1] 199/13  ST [11] 1/13 1/18 1/20 1/23 2/2 2/4  2/10 180/20 180/23 235/23 265/25  ST-elevation [1] 235/23  stability [1] 17/6  stacked [1] 102/19  stage [2] 52/15 124/8  stains [1] 223/11  stamp [1] 105/4  stand [10] 5/7 7/18 7/20 124/10 192/14  252/5 284/3 294/21 303/13 308/19</p>	<p>standalone [1] 8/22  standard [28] 62/13 62/16 62/19 62/20  62/25 84/20 99/7 99/24 100/1 100/2  104/17 126/10 128/21 142/23 187/15  221/17 251/16 303/16 304/3 304/8  304/8 304/9 304/10 304/11 304/18  304/21 305/3 305/20  standards [38] 53/23 57/6 57/23 57/24  58/1 83/25 96/13 100/4 104/21 104/24  125/16 125/18 125/22 125/23 125/25  125/25 126/3 126/5 126/6 127/24  128/2 128/4 128/5 128/6 128/7 128/8  129/1 235/25 303/3 303/17 303/21  303/21 303/25 305/5 305/8 305/17  305/18 305/24  stands [1] 117/19  star [18] 268/3 268/20 268/24 269/1  269/5 269/20 270/17 270/19 270/20  270/25 271/2 271/4 271/7 271/8  272/10 272/14 273/6 273/9  stared [1] 161/1  stars [1] 269/10  start [15] 40/9 93/11 111/17 120/9  121/10 122/13 124/25 148/10 153/14  170/15 183/13 190/10 207/12 218/3  218/7  started [12] 46/13 54/18 111/18 112/9  112/12 118/1 118/2 121/23 124/5  139/14 141/12 228/25  starting [2] 54/23 158/20  starts [4] 51/15 122/10 134/10 166/10  state [30] 25/9 151/8 151/25 159/1  166/13 172/5 172/7 172/9 179/7  179/22 191/23 233/6 233/14 233/21  233/22 246/1 246/3 246/6 246/9  246/14 246/18 246/20 246/23 247/6  247/13 251/24 264/21 291/24 291/25  309/25  stated [7] 224/10 224/11 252/19 254/8  257/13 273/15 297/4  statement [11] 5/8 10/18 43/7 43/16  43/18 103/25 127/20 258/4 258/6  286/6 309/10  states [14] 1/1 1/10 4/4 6/16 125/20  126/1 126/1 166/15 186/7 227/5  234/12 312/4 312/6 312/10  static [2] 63/11 81/17  stating [1] 274/7  stay [11] 27/8 27/11 28/6 28/17 31/14  288/12 288/13 288/14 288/20 303/11  307/2  stayed [1] 161/10  staying [1] 38/16  stays [1] 30/6  STE [6] 1/23 2/2 2/4 2/6 2/8 2/10  steel [2] 103/19 104/25  steer [2] 144/25 148/21  steering [17] 131/15 144/23 144/24  144/25 145/4 145/11 173/20 194/8  205/11 205/16 205/18 205/19 205/20  205/24 205/25 215/14 215/15  STEMI [1] 180/23  stenographically [1] 312/7  step [4] 7/25 112/19 120/23 286/20  sternal [4] 208/15 209/3 224/14 225/15  sternum [2] 209/4 209/6  sticker [5] 272/9 272/23 273/1 273/3  273/4  sticks [1] 152/16  stiff [2] 79/25 80/4</p>	<p>still [29] 11/19 15/14 25/12 29/15 55/17  65/16 66/14 81/16 83/14 88/21 102/14  103/23 113/25 149/5 155/9 161/12  194/5 205/8 222/3 223/12 223/13  225/13 240/21 241/3 241/6 243/24  288/11 289/10 294/11  stop [5] 65/12 110/8 168/6 217/5  293/16  stopped [1] 254/16  stops [3] 17/11 19/21 227/18  storage [3] 15/12 15/20 22/1  store [2] 141/2 145/23  stories [1] 184/12  story [1] 176/1  straight [19] 19/4 22/13 110/7 153/9  153/14 153/15 154/6 154/14 154/15  154/25 155/1 168/6 192/1 192/2  192/20 192/21 199/7 205/5 255/6  straighter [2] 154/11 155/1  Straightish [1] 155/2  street [1] 194/19  strength [73] 42/25 43/11 46/9 46/24  47/17 52/17 54/12 54/19 56/18 56/23  57/9 59/22 61/20 61/23 62/7 62/13  62/15 66/22 67/7 67/19 67/19 69/3  69/23 70/6 70/9 71/9 71/11 71/13  71/20 72/4 73/17 73/18 74/3 74/14  74/16 74/19 74/20 74/23 75/1 75/7  75/8 75/13 76/13 76/22 77/10 77/12  77/13 77/14 77/15 78/1 82/25 84/12  85/2 86/24 87/3 87/3 87/5 87/11 87/16  88/10 88/11 88/14 97/15 97/17 98/17  100/22 101/17 156/18 157/3 157/6  157/14 303/15 305/20  strengthened [1] 81/19  stress [3] 182/21 219/11 241/6  stretch [6] 142/12 142/18 142/22  143/18 192/1 192/2  stricken [1] 109/8  strike [4] 14/8 65/19 68/3 302/14  strikes [3] 75/19 75/24 252/24  striking [2] 65/25 71/5  stringent [1] 125/24  stroke [1] 241/25  strong [2] 196/13 196/14  stronger [9] 50/4 50/10 55/25 81/20  84/16 84/23 105/2 105/7 156/21  struck [1] 64/25  structural [5] 36/7 53/25 97/14 97/20  103/20  structurally [1] 186/18  structure [29] 6/20 16/25 18/24 27/20  27/21 30/12 32/5 55/21 56/4 64/15  64/22 66/6 66/15 67/13 88/24 98/6  98/6 103/20 105/1 105/1 105/5 143/22  143/23 143/25 144/3 145/1 150/6  209/1 225/23  structures [2] 19/3 144/24  struggling [1] 182/18  stuck [1] 222/22  students [2] 178/21 178/21  studied [2] 57/2 266/5  studies [6] 43/10 73/22 117/7 257/21  258/15 259/10  study [23] 24/18 70/5 85/5 85/11 135/8  185/20 213/9 221/25 254/22 257/3  258/5 258/16 258/23 258/24 259/1  259/3 259/5 259/11 259/12 259/18  262/10 262/11 283/13  studying [1] 183/23</p>
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---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

S Case 4:23-cv-00088-CDL	Document 383 Filed 03/21/25 Page 354 of 362	129/6 148/5 150/9 243/7 270/17
<p>stuff [7] 8/17 109/25 122/5 217/21  306/17 306/21 311/8  subarachnoid [2] 226/8 226/16  subcomponent [1] 132/6  subdural [1] 226/17  subject [5] 33/13 151/21 251/13 255/25  256/17  subjecte4d [1] 103/9  subjecting [1] 47/8  submarining [1] 143/21  submission [1] 89/20  submissions [1] 83/20  submit [1] 302/1  submitted [6] 10/22 84/10 106/5  106/10 106/12 302/2  submitter's [1] 69/15  subparagraph [1] 89/10  subpoena [1] 292/10  substance [1] 171/23  substantially [1] 104/21  subtle [1] 209/24  such [8] 60/9 65/7 68/22 92/4 107/11  132/6 292/8 292/8  suck [1] 141/10  sudden [12] 238/19 239/23 240/1  240/20 241/18 242/7 276/3 277/1  277/6 277/12 277/17 278/8  suddenly [3] 240/13 282/6 282/6  sued [3] 166/10 166/11 167/15  suffer [3] 263/8 263/11 263/18  suffered [3] 169/17 296/2 298/2  suffering [4] 85/4 294/17 298/3 299/4  suffers [1] 217/17  suffocate [2] 38/23 39/3  suffocated [3] 38/12 38/18 41/4  suffocating [1] 222/22  sugar [1] 220/10  suggest [3] 8/19 214/20 294/4  suggesting [1] 293/25  suggestion [1] 212/23  sum [1] 224/3  summarize [1] 170/14  summary [1] 70/2  summer [3] 160/9 173/1 245/8  summers [2] 172/25 173/2  sun [2] 24/11 24/14  super [18] 37/8 37/9 38/3 43/23 46/1  46/2 50/25 53/7 57/25 69/23 70/2 72/5  76/19 89/12 130/15 216/22 268/2  268/25  superficial [1] 213/10  superfluous [1] 309/22  supervisor [2] 113/22 113/23  supplemental [3] 157/14 159/6 307/11  supplier [1] 122/25  suppliers [2] 122/16 123/1  supplies [1] 291/25  supply [2] 80/9 132/2  support [9] 17/2 51/4 70/23 162/2  162/8 162/16 229/2 239/21 239/23  supported [1] 145/1  supports [1] 97/20  suppose [3] 9/4 30/21 32/2  supposed [4] 84/11 226/19 253/17  275/8  Supposedly [1] 279/5  Supreme [1] 301/22  sure [49] 5/1 9/9 9/18 10/4 10/6 10/7  11/7 12/3 15/23 16/23 27/14 33/19</p>	<p>40/9 61/17 76/8 85/16 102/25 107/17  115/23 125/8 125/10 140/11 151/22  154/23 163/5 163/19 165/24 168/16  170/16 171/10 172/25 186/17 190/16  191/16 204/11 207/14 215/4 230/17  239/1 246/20 247/12 251/1 262/19  270/5 294/20 302/6 303/4 303/10  305/1  Surely [1] 304/17  surface [2] 32/8 214/20  surfaces [2] 65/5 133/13  Surgeons [1] 184/20  surgery [2] 176/14 230/23  surprise [4] 59/25 115/20 115/24  128/20  surprised [2] 59/2 255/17  surrebuttal [2] 284/8 287/22  surrogate [42] 188/11 188/12 188/13  201/18 201/20 201/23 201/25 202/5  202/6 202/8 202/17 202/20 202/21  202/22 202/23 202/23 204/24 205/1  205/8 206/7 221/24 253/18 254/22  257/3 257/20 258/5 258/15 258/16  258/23 258/24 259/1 259/3 259/5  259/10 259/11 259/12 259/18 260/10  260/22 262/10 262/11 283/13  surrogate's [2] 203/15 203/25  surrogates [1] 253/22  survivability [1] 85/8  survival [1] 85/7  suspect [1] 227/16  suspensions [1] 124/4  sustain [2] 91/3 200/12  sustained [5] 8/2 39/23 210/24 285/5  286/3  swap [1] 174/17  swear [2] 110/11 168/9  Swicord [9] 24/4 24/10 24/13 259/21  259/24 260/4 260/7 261/5 280/11  Swicord's [2] 260/11 260/23  swing [1] 7/5  swirl [3] 153/12 153/13 153/14  switching [1] 103/12  swole [1] 286/13  sworn [5] 110/20 168/21 253/13 284/9  284/14  SWR [20] 57/22 58/20 64/2 64/4 64/5  64/7 70/19 70/22 74/23 75/2 75/6 75/6  75/10 75/14 76/1 85/3 85/6 99/4 100/6  100/24  SWR's [1] 63/7  SWRs [1] 99/23  symptoms [4] 182/19 239/14 240/4  240/4  system [52] 14/22 89/5 115/15 117/23  120/2 127/12 127/14 128/9 128/11  128/23 129/8 131/12 131/22 132/10  136/14 138/22 139/17 140/24 142/13  142/17 142/19 143/11 143/11 144/2  144/11 146/20 147/10 148/18 155/18  160/14 178/4 183/5 183/14 183/14  183/16 218/4 218/6 218/13 218/16  218/17 220/16 240/9 241/1 241/2  242/15 268/20 269/20 270/9 270/19  270/25 272/6 273/24  system-level [1] 131/22  systemic [1] 108/6  systems [18] 112/14 113/7 113/12  113/14 118/15 118/23 121/5 121/8  122/21 126/7 128/10 128/10 128/11</p>	<p>T  T-1 [1] 196/4  T-3 [1] 196/5  T10 [1] 224/25  T12 [1] 224/25  T2 [1] 210/1  T3 [4] 197/10 209/24 210/2 224/25  T300 [1] 173/25  T4 [4] 197/10 209/24 210/3 210/4  T5 [1] 224/25  table [4] 72/20 139/12 147/9 227/10  tach [1] 181/12  tachycardia [3] 182/20 239/15 240/5  tachycardic [1] 219/14  take [71] 4/7 21/20 23/4 23/21 24/25  31/6 31/18 36/4 39/1 45/21 49/9 50/3  63/16 72/19 74/12 75/22 76/8 78/9  79/18 89/17 93/16 101/1 105/19  109/20 110/1 110/9 120/10 120/15  123/20 124/17 125/14 126/14 130/19  132/15 144/17 159/6 159/21 161/13  162/23 168/7 172/18 173/13 173/14  177/23 179/21 184/23 185/1 186/10  186/15 189/17 193/23 201/11 202/16  205/7 208/21 219/18 227/1 230/7  235/24 255/5 269/2 272/4 275/16  276/20 279/7 287/8 291/5 303/6  306/18 309/3 310/5  taken [5] 21/10 104/3 125/9 200/8  283/6  takeout [1] 303/7  takes [13] 113/15 120/12 121/23 122/6  123/25 124/22 124/24 125/12 175/9  177/9 213/23 216/23 288/10  taking [15] 6/24 7/12 17/24 56/1 56/1  79/4 104/14 179/19 182/3 185/4  209/20 214/10 225/23 237/23 306/21  tale [2] 147/9 147/16  talk [35] 15/5 36/24 45/5 52/14 52/18  55/2 55/10 60/10 64/8 64/20 68/9  70/14 82/21 86/1 90/23 109/9 114/1  117/17 117/20 118/7 121/15 127/4  130/15 132/16 150/9 152/15 155/21  170/15 183/17 213/15 224/18 226/18  237/25 238/5 300/22  talked [28] 15/23 26/13 32/13 33/1  52/20 52/22 59/18 61/16 61/19 62/10  63/1 68/20 70/12 74/13 91/10 100/3  115/21 116/1 132/17 143/7 164/9  166/4 178/3 209/22 215/4 262/24  266/15 281/17  talking [46] 5/1 15/10 18/14 27/6 34/8  41/3 42/23 55/7 55/24 60/14 60/21  62/17 62/17 63/17 69/25 71/1 78/3  81/5 90/20 92/21 118/7 123/3 123/5  126/24 153/2 180/1 204/22 216/10  217/19 229/23 230/4 238/18 242/11  247/21 248/19 248/20 250/23 261/3  271/13 271/13 273/9 278/1 278/2  285/18 293/16 302/25  talks [4] 63/7 63/8 80/24 301/10  tall [2] 21/2 202/22  Tallahassee [1] 286/10  taller [9] 202/8 202/25 203/7 203/8  203/13 203/14 203/18 206/10 207/7  Tandy [9] 56/8 56/8 64/12 140/3  141/24 155/22 190/16 192/6 215/5  Tandy's [10] 63/21 64/8 64/25 101/1</p>

T	Case 4:23-cv-00088-CDL Document 355 Filed 03/21/25 Page 355 of 362	
<p>Tandy's... [6] 139/25 140/4 145/19 146/10 148/5 191/13</p> <p>tape [2] 203/20 262/19</p> <p>target [2] 54/12 56/19</p> <p>targeted [1] 109/18</p> <p>taxpayer [1] 289/2</p> <p>teach [3] 114/6 178/20 178/21</p> <p>team [13] 115/7 115/23 120/12 122/10 122/10 123/19 159/17 159/22 160/6 177/19 236/1 237/10 290/15</p> <p>teams [1] 112/16</p> <p>Tech [1] 111/25</p> <p>technical [9] 18/2 69/9 111/11 113/18 114/4 117/6 117/10 119/22 162/6</p> <p>technically [2] 7/6 113/21</p> <p>technology [1] 182/14</p> <p>teem [1] 122/12</p> <p>telephone [2] 236/22 237/1</p> <p>tell [53] 14/13 23/9 31/3 40/24 41/25 75/2 83/16 104/7 107/7 107/15 110/15 128/18 130/5 134/19 134/23 135/11 135/12 136/3 147/9 147/16 150/23 150/24 152/3 152/24 152/24 153/2 153/4 153/22 155/10 160/22 167/6 167/7 167/8 168/14 169/2 172/3 172/23 190/4 190/12 198/24 213/14 217/18 230/23 240/16 241/8 242/16 267/12 280/13 280/18 284/10 284/10 298/8 306/18</p> <p>Tell-tale [2] 147/9 147/16</p> <p>telling [12] 13/25 14/21 20/21 41/6 44/23 94/18 155/8 155/12 195/20 241/4 242/24 247/9</p> <p>tells [5] 25/25 128/19 199/12 199/16 227/14</p> <p>ten [7] 41/19 146/20 146/24 158/14 197/21 230/23 240/22</p> <p>tend [3] 19/2 138/18 209/2</p> <p>tender [11] 7/7 73/6 73/7 120/3 164/6 186/22 256/5 269/23 274/17 286/23 287/2</p> <p>tendered [3] 11/5 11/6 11/7</p> <p>tendering [1] 287/7</p> <p>tends [1] 153/23</p> <p>tens [1] 118/20</p> <p>tentatively [1] 288/15</p> <p>tenth [5] 113/6 113/8 130/16 130/19 130/20</p> <p>tenting [2] 31/24 91/21</p> <p>term [2] 19/22 27/21</p> <p>terms [20] 11/11 17/6 42/25 46/8 91/13 139/16 142/9 157/14 171/10 177/12 180/25 189/20 197/7 204/11 207/8 224/25 234/10 248/23 249/9 250/19</p> <p>terrible [1] 80/18</p> <p>test [94] 37/16 37/23 46/24 56/24 59/23 60/12 60/14 60/20 60/21 60/24 61/19 63/1 63/5 63/11 63/14 63/17 63/20 66/20 66/25 67/2 67/10 67/11 67/18 68/8 69/1 75/21 76/2 76/21 77/22 79/11 79/16 82/2 82/3 82/5 82/8 82/13 83/6 83/13 83/14 87/9 88/1 88/7 89/8 89/10 89/11 89/21 89/22 91/8 91/17 92/3 95/17 96/8 96/10 96/15 96/18 96/23 97/5 97/6 99/12 100/19 101/21 102/1 102/11 102/21 104/23 106/9 106/10 118/6 118/7 123/1 123/23 124/4 124/4 129/10 129/16 129/19 129/22 131/11 131/22 131/23</p>	<p>131/25 132/1 132/6 174/19 188/15 241/6 242/9 242/22 268/7 268/18 268/22 269/12 272/2 281/1</p> <p>tested [7] 38/2 88/8 96/13 104/12 118/16 132/10 188/19</p> <p>testified [75] 5/12 5/14 6/11 7/14 8/6 12/15 12/24 13/2 17/16 23/5 23/25 24/24 25/11 25/11 33/11 41/4 42/22 45/13 54/2 61/14 64/9 66/20 73/1 73/21 110/21 155/25 156/10 158/1 158/16 168/22 226/2 232/9 232/10 232/12 232/21 232/24 233/14 233/19 233/21 234/6 234/9 234/20 235/1 235/6 235/9 235/14 248/11 248/14 248/17 248/23 249/1 249/3 249/5 249/7 249/10 249/10 249/12 249/14 249/20 251/25 254/10 254/17 260/4 260/20 264/3 265/21 268/6 268/17 270/16 271/14 273/23 277/21 284/15 296/19 303/20</p> <p>testifies [2] 256/9 277/16</p> <p>testify [17] 7/19 7/22 7/24 8/7 79/19 137/13 137/20 137/20 232/6 236/6 236/21 238/12 246/24 247/5 259/25 261/5 292/13</p> <p>testifying [17] 7/15 14/2 14/5 60/13 74/6 104/14 211/15 211/17 232/16 233/25 235/20 237/16 246/24 247/19 248/3 260/7 264/11</p> <p>testimony [60] 5/23 5/23 5/24 18/1 22/3 22/19 22/20 24/3 24/18 24/19 25/5 25/19 25/22 42/14 46/4 52/21 64/10 79/16 80/9 80/17 80/23 103/18 110/12 114/21 114/22 116/20 120/6 136/18 136/20 137/15 149/22 151/17 153/1 156/13 158/5 168/10 169/16 183/18 209/15 232/1 232/13 233/5 233/9 240/11 248/20 248/21 251/10 253/13 254/3 254/19 255/7 260/11 260/23 267/22 268/13 268/15 285/16 295/7 297/14 306/23</p> <p>testing [45] 37/7 37/9 42/3 51/15 67/6 78/18 80/10 83/16 98/20 101/13 101/14 112/23 112/24 113/2 113/7 118/1 118/3 118/5 118/10 120/5 120/17 122/24 124/21 125/4 126/11 127/23 129/3 129/3 129/5 129/6 129/7 132/2 132/12 132/13 155/19 173/23 174/4 174/6 174/11 174/14 174/18 178/16 218/14 219/8 280/4</p> <p>tests [44] 37/18 55/1 55/11 61/7 61/10 67/7 79/5 79/17 81/3 82/14 90/6 96/16 96/19 96/20 96/21 96/22 98/15 99/21 103/6 103/10 103/13 106/19 118/14 118/19 118/20 118/22 130/11 131/17 174/7 174/8 182/10 182/11 182/21 183/11 188/14 188/16 188/22 189/2 241/4 243/8 243/22 243/23 243/24 269/5</p> <p>text [1] 274/11</p> <p>than [70] 12/1 13/15 18/19 19/6 23/17 27/17 29/15 31/4 31/19 31/22 32/3 32/10 40/23 44/15 48/15 50/4 50/10 52/12 58/10 58/21 62/24 63/25 71/5 72/17 73/20 75/24 82/24 86/18 99/24 100/10 100/15 107/14 114/7 137/10 153/2 154/11 157/13 157/19 167/25 184/13 191/1 194/16 195/7 197/8 200/8 202/8 203/18 206/11 206/13 207/8 212/6 214/21 217/6 223/25</p>	<p>225/10 231/6 233/16 234/11 237/16 238/9 250/1 270/10 271/5 271/18 271/19 273/11 275/16 288/13 294/14 309/2</p> <p>thank [35] 10/19 11/21 61/12 93/19 95/4 98/23 109/5 125/15 149/11 149/11 163/24 165/6 168/3 168/19 171/8 171/23 183/20 186/21 187/2 204/2 204/6 206/19 231/8 255/20 256/24 261/11 282/13 283/21 286/4 286/16 286/17 287/19 291/7 302/20 305/15</p> <p>Thanks [1] 11/17</p> <p>that [1868]</p> <p>that' [1] 160/17</p> <p>that's [358]</p> <p>thee [2] 215/19 222/17</p> <p>their [85] 25/22 36/4 36/25 38/5 38/15 38/18 39/4 39/23 54/12 57/23 57/23 57/25 59/1 76/18 80/16 81/3 81/16 84/19 85/11 93/13 99/16 101/6 104/2 107/15 109/14 109/23 115/23 116/1 122/22 137/16 138/16 146/3 148/16 166/12 166/13 166/13 167/12 169/21 169/22 177/7 177/13 180/16 182/16 182/16 182/17 183/11 186/11 186/19 189/17 194/10 195/11 196/21 200/13 206/12 209/20 218/6 220/4 220/12 223/1 223/1 227/17 229/20 234/16 235/11 236/14 237/6 237/7 237/13 245/10 246/22 279/9 282/19 282/24 288/2 292/5 292/7 292/10 295/17 296/4 299/7 300/2 300/6 300/15 302/9 303/20</p> <p>them [76] 15/22 22/9 31/17 38/13 39/2 39/3 39/3 48/8 52/18 52/22 57/4 57/6 58/24 62/21 85/10 85/16 86/1 95/9 99/13 102/19 103/21 105/5 107/7 107/15 109/14 109/16 118/12 129/11 132/20 155/5 160/21 163/20 163/23 164/23 166/22 167/5 167/21 167/23 173/20 175/1 177/1 177/10 177/11 178/2 182/9 193/15 194/1 195/25 204/8 204/9 205/14 206/11 209/13 216/11 216/13 216/14 217/11 223/18 226/18 228/7 231/3 235/24 235/25 240/3 240/23 244/7 244/8 249/6 251/15 272/5 279/13 287/8 288/5 299/25 305/6 307/25</p> <p>themselves [2] 183/3 279/10</p> <p>then [115] 6/19 9/6 9/20 9/23 9/24 17/13 27/23 31/5 34/4 35/16 37/23 41/13 45/15 46/13 47/7 50/5 68/25 71/14 72/14 78/23 84/4 93/13 96/24 97/1 97/5 97/17 103/20 108/17 109/15 111/25 137/20 138/17 145/23 155/4 156/4 156/21 156/22 157/18 166/16 166/22 167/4 167/11 172/13 172/20 173/3 173/12 174/16 175/12 178/5 179/10 179/14 180/8 181/2 181/6 183/13 185/18 186/16 186/19 190/5 190/8 191/3 191/3 191/17 191/18 193/9 193/14 193/24 194/3 195/4 196/4 197/20 201/3 202/16 204/15 208/1 208/11 209/5 209/5 209/23 210/2 210/4 210/10 214/11 215/16 216/7 216/12 218/10 218/22 223/14 228/16 230/20 258/24 258/24 259/7 259/11 262/25 278/15 284/5 284/6 288/5 288/6 288/13 288/22 296/7</p>



<p>T then... [11] 297/3 297/21 297/25 298/20 298/20 298/21 300/19 305/17 310/5 310/8 310/18 theory [3] 271/23 299/8 299/10 there [264] 4/11 7/1 9/17 10/15 10/17 10/22 10/23 10/25 11/1 11/3 20/22 21/2 21/16 23/25 24/11 25/9 25/10 25/20 26/13 26/15 28/14 29/24 30/6 30/19 32/3 32/11 32/12 33/18 39/6 43/17 43/19 44/2 44/7 46/5 47/13 47/19 47/21 50/12 50/13 51/22 52/7 58/22 59/13 60/3 60/11 62/20 65/2 65/13 66/9 69/22 71/13 71/16 71/23 73/22 74/18 74/22 76/15 78/19 79/25 80/3 80/3 80/18 83/1 94/7 96/12 104/4 104/21 107/6 107/19 108/6 109/18 110/9 111/6 111/7 115/7 115/19 117/1 117/5 122/14 122/16 122/20 126/3 126/4 127/11 128/13 128/14 128/18 130/13 131/18 131/19 131/19 131/20 131/24 132/6 132/13 132/18 132/20 136/12 136/15 140/22 142/20 143/23 143/25 145/25 147/18 148/19 150/20 151/8 153/20 154/10 155/25 156/6 158/9 161/10 161/25 165/15 165/25 167/11 168/7 171/5 171/9 172/20 176/11 176/20 177/14 177/17 177/24 178/17 179/6 179/9 179/21 181/8 182/11 183/5 186/18 194/1 194/16 200/6 200/7 200/9 201/11 202/11 202/11 202/13 202/15 203/4 203/20 205/21 205/21 207/1 208/5 208/24 210/2 210/5 211/16 212/8 214/15 215/13 215/15 217/3 217/12 220/23 221/7 221/14 221/16 221/16 222/17 222/19 222/21 222/22 223/5 224/1 225/14 229/23 234/12 236/1 238/21 239/3 239/19 239/20 240/12 240/21 240/21 240/22 240/22 241/7 242/9 242/22 243/8 243/11 247/16 247/16 249/16 250/21 251/20 251/23 253/3 253/5 253/9 253/20 253/21 253/23 253/23 253/23 254/9 254/13 256/20 256/23 260/11 260/19 260/25 261/17 262/21 262/22 264/13 264/14 265/23 266/8 270/23 270/25 270/25 271/4 271/8 273/4 273/6 273/10 275/9 275/10 275/12 276/9 276/11 276/12 277/14 277/19 277/21 278/20 280/3 280/7 280/9 285/22 286/6 290/13 290/21 292/6 292/6 292/15 294/22 296/5 298/5 301/1 301/11 301/19 304/9 304/11 304/13 304/19 306/7 306/11 306/16 307/4 307/9 308/4 308/20 310/22 there's [68] 14/19 14/22 17/14 17/23 25/5 28/16 33/23 34/1 35/18 43/10 44/22 58/20 61/11 65/11 74/18 91/14 91/14 98/3 98/16 103/12 103/13 117/11 117/11 117/24 121/5 122/15 123/23 125/10 130/14 132/2 132/12 147/7 147/22 155/9 155/12 157/18 165/9 182/24 182/24 194/24 210/15 215/12 216/5 217/7 217/24 218/24 221/16 222/13 222/16 235/22 243/12 251/15 253/23 258/5 260/13 264/17 268/20 269/8 277/24 290/11 292/8 294/13 297/4 299/2 300/1 304/2 305/2 307/5</p>	<p>therefore [3] 226/4 290/23 298/10 therefrom [1] 291/19 these [114] 9/21 20/25 22/7 26/21 28/1 28/23 30/24 31/21 32/10 37/11 37/13 37/14 40/19 46/13 48/2 51/3 51/22 52/5 57/24 58/23 71/1 78/1 81/13 93/12 94/8 95/7 96/16 99/6 102/20 106/11 106/19 106/24 107/25 108/6 108/19 111/12 114/4 115/17 117/10 118/22 123/20 124/2 124/3 124/3 124/4 124/11 124/11 125/3 127/23 129/2 130/16 130/21 133/23 134/11 135/10 137/15 137/24 138/1 140/6 140/6 141/25 146/20 146/21 147/2 147/4 149/8 153/16 153/21 158/23 159/17 162/23 164/15 166/21 167/25 172/21 177/21 177/25 181/12 184/8 185/14 191/4 192/7 196/13 196/21 197/9 197/11 197/14 197/17 197/24 199/16 204/7 209/8 209/14 210/6 210/23 214/16 217/22 219/5 219/11 221/22 222/9 228/3 238/17 243/4 251/3 255/16 257/19 276/18 278/1 285/22 287/12 290/6 293/8 303/16 they [379] they'd [1] 285/24 they're [4] 125/4 228/17 235/13 237/23 they've [4] 83/4 109/2 266/5 292/9 thicknesses [1] 56/5 thighs [2] 143/25 205/17 thing [34] 15/23 26/24 28/6 31/23 34/4 48/15 66/17 83/18 92/23 101/9 102/9 109/11 126/19 132/6 139/4 142/6 147/8 148/13 163/16 166/19 174/14 182/15 184/19 190/11 191/19 202/25 205/10 206/23 223/15 228/21 237/11 243/12 285/12 294/9 things [78] 5/4 16/23 17/16 25/25 26/19 29/17 30/4 31/6 31/10 32/9 32/13 37/5 44/4 47/17 49/25 51/3 52/5 52/12 60/10 73/1 75/18 75/23 81/7 84/9 84/19 100/9 110/1 113/4 121/25 122/1 123/4 123/5 123/8 123/18 123/22 124/7 127/1 138/17 147/14 155/13 165/24 166/5 166/20 167/19 167/24 167/25 170/23 171/17 180/9 181/15 181/24 182/20 185/20 190/8 194/9 203/1 205/15 213/22 214/16 214/17 217/3 217/19 220/10 221/16 221/18 221/19 223/10 227/5 242/2 243/4 244/7 244/9 257/20 258/6 263/22 279/8 302/17 302/24 think [134] 4/8 4/23 6/7 7/8 7/13 7/14 8/25 9/3 9/15 9/22 10/12 10/16 12/4 13/1 14/10 18/6 18/8 18/9 19/19 21/15 22/4 33/21 36/9 36/18 37/3 37/18 37/21 42/5 42/7 42/21 42/23 43/8 44/7 45/12 46/4 50/25 53/22 55/12 56/14 59/5 59/15 60/10 61/1 61/16 62/23 78/12 78/16 79/15 79/23 80/6 82/5 83/1 83/19 98/6 98/9 104/4 107/4 107/9 107/18 109/2 109/3 114/9 135/6 136/19 146/2 148/1 149/23 150/23 151/6 157/3 157/25 158/3 158/5 160/16 160/24 163/17 164/16 164/19 171/6 183/11 189/14 191/6 191/10 193/6 195/9 208/19 218/2 221/2 224/24 227/22 233/19 234/9 234/10 239/6 239/24 243/11 254/5 254/15 255/3 255/14 265/3 268/11 271/7</p>	<p>274/20 278/15 284/3 287/8 288/3 288/4 288/5 288/12 289/5 290/18 292/21 292/22 292/24 294/12 296/11 296/18 299/2 299/11 300/10 301/23 304/23 305/18 307/5 308/8 309/1 309/21 310/3 310/3 310/4 310/19 311/6 thinking [2] 83/25 294/19 thinks [5] 115/14 165/9 181/4 216/5 293/2 third [3] 181/2 205/17 301/10 Thirteen [1] 139/7 this [618] this crash [1] 132/16 Thomasville [2] 237/2 244/3 THOMPSONCOE.COM [1] 2/7 THOMPSONHINE.COM [1] 2/1 thoracic [2] 208/14 224/20 thorax [5] 139/22 139/23 141/19 142/5 175/3 those [170] 11/10 13/2 13/18 22/22 25/16 27/15 29/2 29/16 30/2 30/15 30/16 30/21 31/10 32/21 33/10 34/5 35/14 39/11 46/9 46/21 49/25 51/14 51/20 53/2 55/2 55/10 55/12 55/19 56/4 57/1 57/24 60/6 61/10 64/15 68/23 70/11 70/20 71/15 76/17 76/21 77/8 77/16 77/17 78/4 78/5 78/7 78/13 78/16 79/19 85/20 86/14 86/17 89/1 89/5 91/19 92/10 96/18 96/21 96/21 97/3 97/13 97/19 99/13 99/16 99/18 99/20 99/21 99/23 100/3 100/5 104/11 104/15 104/24 105/4 105/13 109/8 110/1 113/7 115/2 117/16 117/19 118/18 119/17 119/18 120/6 125/22 128/1 132/3 132/4 132/9 134/9 134/17 135/12 137/1 137/16 140/21 142/9 143/3 143/11 145/16 151/11 154/22 154/25 155/6 162/18 165/14 165/17 166/5 167/9 167/20 167/24 170/23 171/17 174/5 174/24 175/1 175/4 175/5 175/6 175/7 178/7 180/24 181/14 183/22 187/1 189/10 189/14 189/21 190/9 196/6 199/20 199/20 199/22 208/14 209/22 209/25 210/6 214/23 216/8 217/3 217/10 224/16 227/21 236/20 238/15 241/19 241/20 241/20 242/2 244/2 244/5 249/16 259/7 267/25 274/10 275/24 286/10 293/24 294/3 297/18 297/19 297/20 298/6 301/21 304/1 305/18 307/14 307/16 307/17 307/18 though [10] 6/10 8/2 160/1 175/2 205/6 218/16 223/12 243/4 306/9 309/6 thought [14] 40/6 61/3 200/20 203/17 204/6 236/23 237/2 240/2 261/3 268/14 279/8 298/24 299/10 299/13 thoughts [1] 293/17 thousand [2] 63/24 250/1 thousands [5] 118/17 118/20 120/13 122/11 211/12 thready [1] 215/22 three [35] 46/5 60/6 70/1 81/2 82/4 82/6 82/14 96/20 96/21 102/17 102/17 103/6 125/14 147/20 157/6 157/10 173/2 175/2 181/1 196/2 197/18 227/10 227/10 233/16 241/6 262/2 263/4 274/3 274/7 274/25 275/8 275/9 275/12 286/12 302/14 three-dimensional [1] 263/4</p>
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<p>T threshold [3] 143/9 143/12 143/13 thresholds [1] 145/6 through [56] 7/18 16/11 26/19 26/20 41/20 41/23 52/4 54/14 61/8 61/9 66/16 79/5 88/23 116/20 118/4 119/20 121/3 123/12 133/11 133/14 133/24 144/3 144/17 145/7 147/22 159/10 160/9 174/22 175/1 181/3 181/4 183/6 192/11 195/15 198/19 205/20 207/15 208/5 208/20 209/21 211/12 213/19 215/3 215/19 215/20 216/1 222/14 222/16 228/13 237/12 239/6 260/17 260/19 264/12 278/13 290/18 throughout [2] 92/24 118/2 thumb [1] 203/10 tied [1] 290/15 ties [1] 48/14 tighten [1] 141/7 tightens [1] 141/6 tilted [3] 192/22 205/4 205/5 time [88] 7/12 11/18 35/21 36/13 44/4 53/6 53/17 54/17 54/18 54/22 55/1 55/2 55/13 55/14 55/24 56/21 58/18 62/14 62/15 65/9 65/11 65/14 65/20 66/11 68/14 74/12 76/12 76/15 105/20 107/12 109/12 109/17 109/20 109/21 111/11 111/22 112/16 112/21 113/12 113/15 114/2 114/6 114/15 114/23 121/1 122/7 124/23 124/24 130/19 138/18 141/14 143/3 158/11 158/17 158/18 159/13 159/19 161/16 165/11 172/23 173/10 173/25 174/15 175/19 181/1 182/8 188/22 194/19 195/2 198/3 200/17 211/7 211/23 214/21 217/12 227/13 232/5 233/19 239/16 240/23 243/3 248/2 250/3 250/6 250/10 255/5 277/16 289/14 timeframe [2] 99/9 140/10 timeline [5] 120/19 120/21 121/4 121/23 156/10 timely [1] 107/6 times [24] 12/24 24/1 60/5 60/6 60/6 60/6 75/4 82/6 114/18 114/20 139/3 145/21 146/3 157/6 158/1 158/3 183/9 217/23 226/13 230/18 230/24 234/9 262/2 286/12 timing [8] 25/7 72/6 81/6 121/6 121/8 122/15 140/10 216/8 tiny [2] 229/22 286/7 tire [1] 7/5 tired [1] 190/12 tires [1] 21/24 tissue [6] 212/25 213/11 214/2 214/3 214/5 214/24 Titan [4] 77/2 77/12 86/20 87/12 title [7] 69/22 71/21 71/22 113/17 113/18 269/19 312/6 titled [3] 69/8 205/6 269/16 TMM [1] 69/9 today [34] 8/6 22/5 22/11 32/18 95/2 95/21 95/24 98/4 98/16 112/7 114/1 117/17 117/21 118/4 160/10 166/4 169/16 170/1 170/15 172/16 180/1 187/22 187/23 200/21 231/25 246/15 248/24 252/5 268/12 273/23 284/10 289/25 291/1 303/20 today's [1] 53/23 together [21] 13/6 13/9 17/3 17/5 17/15 26/16 33/2 53/2 56/4 99/23 102/12</p>	<p>102/19 150/22 177/10 177/15 209/1 209/4 214/11 214/18 221/19 238/23 told [25] 63/2 115/20 115/25 134/14 138/4 141/16 152/15 158/5 193/5 211/16 211/18 212/20 213/9 215/15 231/16 234/9 253/25 263/14 267/21 272/13 272/15 275/3 280/25 284/3 305/4 Tomography [1] 213/7 tomorrow [2] 288/1 299/17 ton [1] 194/20 tonight [2] 286/24 306/14 too [17] 36/21 37/5 55/12 60/6 62/9 80/4 100/11 101/12 105/10 118/17 181/20 220/23 231/24 237/20 237/23 244/25 293/23 took [15] 5/7 15/16 56/7 56/11 94/9 103/19 137/9 173/3 175/23 196/17 199/19 203/2 252/20 262/9 306/7 tool [1] 47/3 top [52] 17/1 17/7 17/8 17/14 20/4 22/16 22/21 24/10 24/13 26/24 27/1 27/5 27/19 27/20 27/21 29/2 32/11 35/8 35/10 35/12 37/15 51/4 53/20 53/24 69/8 71/5 81/24 81/24 88/4 91/15 102/14 133/25 135/23 145/18 203/15 203/24 205/1 205/18 205/22 207/20 207/21 212/11 212/12 222/1 222/2 251/21 260/15 260/16 261/20 283/15 283/17 293/6 topic [1] 45/5 topics [4] 76/3 117/16 117/20 155/21 tops [2] 35/15 48/14 torso [3] 141/21 224/13 297/24 total [9] 96/20 128/19 159/1 159/8 160/22 187/22 187/23 234/21 249/24 totally [1] 40/16 touch [3] 66/19 133/22 191/14 tough [4] 209/25 227/13 238/22 260/18 tow [6] 15/24 16/4 34/7 36/10 122/4 200/15 toward [2] 28/14 86/4 towards [6] 4/22 20/24 112/18 112/19 161/25 260/16 towing [2] 34/21 34/23 town [1] 111/2 Toyota [5] 77/4 77/13 86/22 87/16 97/25 trace [2] 20/7 23/14 tracing [1] 51/7 track [1] 150/1 tracks [2] 215/11 217/5 traction [1] 148/20 Traffic [3] 176/16 176/21 176/24 trailer [2] 215/18 252/18 train [1] 189/21 trained [1] 180/8 training [2] 183/20 185/10 transact [1] 216/24 transaction [1] 308/16 transcript [3] 1/9 312/7 312/9 transect [1] 216/25 transfer [2] 100/14 112/18 transferred [2] 275/7 275/16 transition [1] 59/6 translating [1] 60/25 transmit [2] 100/13 181/6 transmits [1] 30/13 transpired [1] 25/23 Transportation [1] 270/3</p>	<p>trapped [1] 263/24 trauma [14] 176/3 176/4 180/2 180/3 184/18 184/20 184/21 184/22 184/22 184/23 185/23 197/8 225/11 231/2 traumatic [9] 170/18 171/10 171/12 185/5 217/7 221/6 277/20 277/25 281/25 travel [1] 177/10 treat [5] 180/13 181/16 181/18 181/24 182/6 treated [4] 165/14 185/8 236/2 238/10 treating [2] 217/20 236/10 treatment [4] 230/12 230/13 230/15 236/20 treats [1] 179/25 triage [1] 181/3 trial [28] 1/9 42/20 74/13 92/24 106/13 107/3 107/11 107/13 107/22 108/5 108/16 109/2 114/18 114/19 114/22 115/6 115/22 116/2 158/2 158/4 158/5 165/25 233/3 248/20 289/13 290/6 290/18 295/7 trials [1] 42/18 Trice [3] 233/11 233/23 234/13 tried [3] 109/13 163/12 284/25 tries [1] 215/22 trim [1] 104/5 Trooper [2] 151/17 251/24 troopers [4] 25/9 151/8 151/14 152/10 trouble [3] 102/8 253/11 254/16 TROUTMAN.COM [2] 1/24 2/3 truck [93] 15/5 15/6 15/6 15/17 15/24 16/3 16/4 16/11 16/16 17/22 18/3 18/5 18/7 18/10 18/17 18/20 19/5 19/7 20/14 21/18 21/23 23/17 24/22 25/12 25/20 26/20 28/24 29/23 33/7 33/15 33/25 34/7 35/23 36/10 36/25 38/6 41/8 41/9 43/24 44/9 51/1 51/7 58/2 58/3 64/13 64/14 64/16 64/25 67/10 67/24 69/23 76/19 78/24 79/5 86/14 88/12 89/12 95/14 100/9 102/14 103/4 121/19 121/20 140/25 200/15 215/18 215/24 215/25 216/17 216/18 247/3 247/14 247/15 252/18 253/2 253/18 253/19 253/22 255/25 256/17 261/14 261/24 262/9 267/13 271/4 272/10 272/11 272/13 272/14 272/16 273/2 283/12 303/4 trucks [10] 37/8 37/9 43/23 46/2 46/13 57/25 72/5 78/5 86/14 86/18 true [125] 5/24 12/9 13/4 14/24 15/3 15/4 30/24 41/22 46/23 51/16 51/20 56/2 59/14 65/2 167/13 222/18 231/19 231/25 232/5 232/24 233/4 233/6 233/25 234/3 234/6 234/13 234/20 235/10 235/14 236/5 236/8 236/12 236/16 237/18 242/4 242/8 242/21 243/14 243/19 244/11 244/17 244/22 245/3 245/6 245/15 245/18 245/25 246/3 246/6 246/9 246/12 246/13 246/18 246/23 247/2 247/12 248/2 248/11 248/14 251/2 251/5 251/17 252/6 252/10 252/13 252/16 252/20 253/1 254/8 254/9 257/5 257/12 257/18 257/25 258/4 258/12 258/16 260/6 263/7 263/17 264/3 264/18 264/23 264/25 265/2 265/3 265/4 266/6 266/12 266/21 266/25 267/5 267/10 267/15 267/23 268/2 268/4 268/5 268/20 268/24 269/1 269/2</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>T</p> <p>Case 4:23-cv-00088-CDL Document 383 Filed 03/21/25 Page 358 of 382</p> <p>true... [23] 269/4 270/20 270/24 271/17  271/24 273/17 273/20 274/2 274/6  274/24 275/2 275/13 275/19 276/2  276/18 277/5 277/18 278/9 282/18  283/5 283/15 307/1 312/7  trued [1] 276/15  Trump [1] 289/1  trust [1] 61/21  truth [7] 110/12 110/12 110/13 168/10  168/10 168/11 284/11  try [10] 28/21 31/11 109/14 109/14  123/20 144/1 144/5 196/10 221/18  232/15  trying [27] 8/6 17/22 18/4 18/6 18/8  18/9 21/8 30/15 44/19 44/19 70/8  75/21 90/23 91/18 91/22 94/25 112/17  114/6 115/15 121/16 189/21 226/25  228/17 228/23 246/15 256/10 304/12  tubing [3] 103/19 103/23 104/25  tuition [1] 173/1  Tundra [4] 77/4 77/14 86/22 87/17  tune [1] 142/16  tuning [1] 142/25  turn [8] 87/22 88/5 88/18 112/25  189/16 190/18 191/21 192/3  turned [7] 26/2 92/11 92/14 179/21  216/15 251/20 258/23  turning [1] 16/4  twelfth [1] 233/19  Twelve [1] 117/14  Twenty [2] 76/6 249/22  Twenty-seven [1] 249/22  twice [5] 44/12 59/12 59/25 109/20  187/20  two [72] 7/21 17/1 25/3 28/1 29/2 29/9  30/2 30/24 32/20 32/21 35/14 39/11  46/21 48/7 49/10 51/6 60/5 61/10  70/20 71/1 71/15 90/5 96/22 100/24  101/3 105/10 105/18 106/7 108/16  111/7 114/11 123/10 138/16 141/8  156/7 160/7 173/7 173/11 176/11  176/14 176/15 176/18 176/22 177/4  177/6 177/14 184/11 187/17 191/15  196/2 202/7 203/7 203/13 208/11  215/11 216/9 216/10 216/12 216/19  217/2 249/21 259/11 263/4 275/8  276/18 279/25 280/13 280/17 291/14  302/11 302/14 308/7  two-dimensional [2] 263/4 280/13  two-hour [1] 123/10  two-year [2] 176/15 177/4  twos [1] 274/11  TX [1] 2/6  type [6] 93/12 93/13 153/3 193/3 225/7  279/6  types [4] 118/10 129/3 131/20 165/17  typical [2] 5/5 121/9  typically [7] 46/15 50/5 50/11 58/15  86/18 154/15 304/7</p>	<p>unclear [1] 55/7  uncomfortable [1] 229/6  uncommon [1] 59/15  unconcerned [1] 241/5  unconscious [6] 221/4 239/22 240/13  240/16 242/13 281/22  undamaged [1] 94/7  under [31] 9/5 9/25 11/19 22/23 53/6  62/16 70/1 134/22 135/4 135/13  150/14 150/24 154/19 155/9 155/15  158/24 166/25 167/14 212/11 235/5  271/23 284/10 284/19 284/22 285/25  291/23 293/8 297/5 297/24 307/16  311/6  underarm [1] 297/8  underbody [1] 16/19  undergrad [3] 172/11 173/3 183/25  underground [1] 172/4  underlying [1] 308/16  underneath [6] 138/2 138/3 143/25  193/6 207/18 210/4  underpinnings [1] 74/11  understand [39] 19/8 21/8 27/10 28/25  31/20 34/6 34/20 40/16 40/25 41/2  41/12 44/24 58/19 64/14 65/13 66/21  70/17 70/21 73/6 79/10 80/2 83/18  103/7 104/3 108/4 114/4 115/15  123/20 135/10 151/9 154/23 191/10  238/22 248/21 251/9 285/17 294/12  298/4 298/7  understanding [22] 26/7 45/11 52/12  54/4 59/4 64/17 73/22 78/25 79/3  85/19 90/22 106/11 116/22 143/16  157/16 160/17 163/6 167/25 189/11  276/1 297/7 297/8  understood [8] 16/24 47/12 80/12  113/4 116/21 164/21 251/11 302/21  undisputed [2] 61/0 72/13  unexpectedly [1] 165/2  unfamiliar [1] 72/23  unfinished [1] 124/2  unfortunately [10] 74/21 222/6 223/25  225/6 227/19 227/25 229/8 253/12  253/24 277/23  unhealthy [1] 220/19  uniformly [1] 260/14  unique [2] 113/20 182/25  unit [1] 85/2  UNITED [10] 1/1 1/10 4/3 125/20  125/25 126/1 227/5 312/4 312/6  312/10  universe [1] 243/13  University [16] 112/2 169/5 172/5  172/7 172/9 176/11 177/19 178/12  244/15 244/15 246/1 246/3 246/14  246/23 247/6 247/14  unless [4] 35/18 165/2 185/4 284/7  unlike [2] 6/12 69/20  unlikely [1] 38/22  unmodified [1] 82/3  unordinary [1] 98/5  unrelated [1] 298/25  unsure [1] 301/8  until [9] 17/25 36/10 66/11 110/2 112/7  158/17 161/10 299/4 308/22  untrue [1] 246/17  unusual [2] 98/3 98/5  up [163] 4/7 7/21 11/8 19/25 21/16  22/24 27/10 28/10 31/24 32/25 33/1  34/1 34/23 35/15 38/22 39/7 41/15</p>	<p>45/15 49/24 51/7 59/19 59/21 59/22  61/2 65/24 70/11 74/18 84/4 86/16  87/21 91/21 91/25 92/11 94/18 96/22  96/25 97/1 102/19 104/4 107/6 111/20  112/7 116/18 120/15 123/7 123/18  123/21 124/25 126/12 127/3 132/8  133/11 134/7 137/21 138/12 139/12  141/10 147/9 147/12 148/20 157/4  157/6 161/11 163/21 165/2 167/21  168/6 174/12 174/16 174/21 178/9  181/14 184/16 190/25 191/3 192/11  192/25 193/9 194/22 195/3 197/24  198/7 198/7 198/22 199/7 199/25  202/19 204/18 204/19 205/5 205/17  206/1 206/15 206/23 207/2 207/23  209/13 212/10 212/10 212/21 214/16  214/17 214/18 216/1 216/12 217/23  220/6 224/3 225/4 228/2 228/13  230/25 235/2 235/19 236/22 238/25  240/3 240/5 240/6 244/3 244/7 248/5  254/5 254/22 254/23 255/22 257/1  258/19 258/21 262/5 263/20 264/13  267/9 268/14 269/14 276/25 277/5  277/17 278/7 278/12 279/10 279/16  280/3 281/2 281/23 284/5 284/7  285/12 285/14 287/25 288/10 290/15  291/5 291/10 293/5 294/10 294/21  301/7 301/12 302/9 306/18 307/24  308/3  update [1] 51/21  updated [1] 106/14  upfront [2] 121/12 121/21  upon [19] 98/9 107/18 108/5 125/19  129/24 138/11 139/24 148/5 148/7  175/22 175/23 190/15 200/21 209/13  212/18 222/6 226/24 290/4 290/8  upper [1] 219/24  upright [5] 16/20 18/23 199/18 202/13  202/15  uprighted [4] 22/1 28/14 32/18 95/3  upside [21] 18/20 18/22 19/7 19/10  25/13 25/20 35/23 94/11 156/4 205/12  223/19 223/20 223/24 223/24 252/6  252/8 252/9 253/9 253/19 263/25  267/19  upstairs [3] 182/3 235/22 288/20  upstream [1] 147/13  upward [1] 30/11  us [64] 2/8 13/21 14/14 14/18 14/21  14/23 15/19 20/21 20/24 21/20 39/1  41/17 50/23 51/10 53/16 61/1 62/22  71/8 72/19 80/17 95/23 97/9 106/11  106/12 106/14 107/3 115/7 121/2  121/23 122/6 123/25 124/6 124/17  125/12 133/7 133/20 158/5 160/22  165/10 167/6 167/7 167/8 169/2 172/3  172/23 179/13 181/1 186/14 190/14  192/11 203/19 207/15 213/14 215/3  227/19 278/16 283/3 283/7 289/1  294/21 295/12 295/13 305/13 309/2  usage [1] 138/13  use [26] 27/21 63/10 64/1 68/2 108/5  120/19 122/25 130/21 142/16 147/24  148/11 148/16 154/12 175/9 182/14  184/24 184/24 198/15 198/16 198/17  198/18 200/13 211/23 212/4 258/8  262/19  used [27] 46/25 67/4 79/17 80/9 81/2  86/14 94/19 103/18 107/12 108/15  108/23 128/7 134/19 134/20 142/9</p>
<p>U</p> <p>U-turn [1] 112/25  U.S [4] 57/4 96/14 125/18 125/23  udo [1] 179/19  ultimate [1] 229/13  ultimately [2] 49/1 105/7  ultrasound [1] 182/14  unaware [1] 106/24  unbelted [2] 188/23 188/24</p>		



<p>U Case 4:23-cv-00088-CDL Document 383 Filed 08/21/25 Page 359 of 362</p> <p>used... [12] 163/8 164/8 174/3 188/21 203/5 213/21 221/19 245/7 245/10 257/14 273/24 299/13 users [1] 309/8 uses [1] 67/18 using [14] 59/23 63/10 63/13 73/23 81/16 108/18 135/9 148/15 174/14 199/22 200/2 201/5 235/13 270/7 usually [24] 12/22 16/18 18/23 47/6 86/15 153/12 175/8 179/12 180/17 183/14 188/15 190/2 191/5 191/6 192/19 193/2 196/24 203/12 208/22 208/23 214/7 236/14 240/3 244/7</p>	<p>192/13 192/16 192/19 192/24 193/14 193/15 193/21 198/16 198/25 199/17 199/19 200/6 205/4 205/12 206/11 207/12 213/8 215/16 215/19 216/2 216/6 216/21 218/19 221/4 242/12 250/19 250/20 251/19 254/14 256/16 263/20 263/25 264/1 272/5 277/22 285/11 295/18 303/1 303/2 304/10 305/21 vehicle crash [1] 216/21 vehicle's [2] 59/12 60/1 vehicles [38] 13/23 21/6 28/10 39/8 58/23 62/15 62/20 62/25 65/17 76/15 76/17 77/17 78/7 86/25 96/21 97/6 97/18 97/25 97/25 98/18 99/7 100/5 112/24 115/14 118/5 118/11 118/12 124/2 146/17 147/5 156/13 156/16 174/5 185/11 186/6 186/11 216/12 258/8 veins [1] 227/22 velocity [1] 195/1 ventricular [1] 181/20 verbiage [2] 92/19 275/11 verdict [8] 165/4 165/9 288/8 288/9 288/11 289/12 294/18 306/12 verification [1] 167/12 verify [1] 33/10 version [3] 10/8 78/4 165/2 versus [6] 60/5 86/10 86/11 181/12 264/7 301/15 vertebrae [2] 196/1 196/3 vertebral [6] 197/17 197/17 198/9 208/11 210/1 224/25 very [56] 5/3 10/8 13/19 32/19 40/19 57/25 58/23 60/4 60/8 65/8 65/9 66/7 66/17 68/3 68/5 68/10 102/9 103/13 113/9 120/9 120/14 120/16 121/10 130/8 130/17 130/18 130/21 149/8 155/16 175/5 175/8 175/14 182/25 193/24 200/15 219/24 220/18 224/16 224/19 225/25 228/11 228/12 233/5 233/24 260/6 261/20 263/15 266/10 267/2 278/22 282/15 283/24 290/10 291/8 291/19 297/22 vessel [3] 213/20 216/24 240/10 vessels [7] 217/15 217/16 220/11 220/13 220/15 240/9 240/10 VIA [1] 2/6 victims [3] 180/12 184/18 223/10 video [9] 129/18 130/17 192/23 198/18 198/20 198/20 252/23 252/24 276/10 videos [4] 36/12 170/24 188/6 188/7 videotape [1] 17/23 view [7] 8/1 32/17 98/10 109/19 145/18 285/7 285/13 views [2] 21/11 297/22 VIII [1] 1/9 violate [1] 104/16 violation [1] 279/9 Virginia [22] 111/20 111/24 111/25 112/3 169/3 169/5 178/12 178/13 179/7 186/3 186/6 231/19 231/20 231/23 232/6 236/9 237/6 244/11 244/12 244/15 264/14 266/2 virtually [2] 97/8 158/8 visor [2] 24/11 24/14 vital [1] 227/1 Vogler [28] 11/19 11/24 21/21 39/17 45/18 61/9 72/15 85/25 87/22 88/7 88/19 89/4 89/11 90/15 91/1 92/2 93/3</p>	<p>93/21 95/5 95/13 97/8 98/7 98/9 98/23 106/3 106/10 158/16 280/22 Vogler's [1] 287/15 VOLUME [1] 1/9 voluminous [1] 126/16 voluntarily [1] 4/14 volunteer [2] 178/18 294/21 vomiting [1] 228/25 vote [1] 300/18</p> <hr/> <p>W</p> <p>wait [2] 25/4 72/14 walk [5] 41/15 123/12 192/11 207/15 215/3 wall [2] 130/9 182/17 wan [1] 191/13 want [83] 8/3 8/15 8/15 8/16 8/24 9/7 9/19 9/20 10/8 14/25 15/23 16/23 25/22 28/22 32/11 33/12 35/23 36/24 40/17 70/1 72/19 72/25 83/18 86/1 89/19 93/12 102/24 102/25 103/7 107/18 109/8 109/9 115/5 121/2 133/23 135/25 139/13 143/14 158/22 160/25 163/5 163/19 165/23 166/4 172/18 173/14 174/21 191/19 204/17 207/12 209/12 212/21 215/7 216/2 224/3 224/18 229/1 230/22 238/9 238/20 251/7 251/15 258/10 259/16 267/24 268/11 275/15 279/4 284/5 288/14 288/15 288/19 288/19 289/18 292/2 296/17 301/8 303/6 305/4 305/6 306/13 309/8 309/16 wanted [18] 4/7 4/15 14/13 35/18 60/10 106/1 147/8 160/22 163/15 167/24 177/23 229/3 266/16 279/11 281/25 282/1 282/3 301/4 wants [6] 7/25 9/16 106/16 121/16 166/20 306/12 warn [3] 4/9 290/1 291/2 warning [1] 165/8 was [483] washer [1] 264/13 Washington [1] 84/7 wasn't [24] 51/24 61/14 85/12 127/17 156/14 204/23 210/24 221/3 225/13 235/5 236/25 241/25 241/25 242/1 243/17 253/12 254/14 254/17 260/21 267/23 276/11 277/2 277/14 301/14 wasting [1] 289/2 watch [1] 230/17 watched [1] 252/23 watched dash [1] 252/23 WATSONPENCE.COM [1] 2/5 WATSONSPENCE.COM [1] 2/11 way [60] 4/8 8/18 10/14 13/14 14/22 19/2 19/19 20/9 29/10 42/1 55/16 68/25 104/9 104/19 107/25 109/14 110/8 124/14 129/7 134/20 142/2 144/13 148/21 153/4 164/11 168/6 182/16 183/1 184/5 184/13 184/23 185/10 197/12 198/6 200/8 202/9 205/19 207/1 210/13 225/5 242/25 243/12 262/22 266/2 282/4 282/23 293/20 293/23 293/24 294/1 294/7 295/10 297/13 299/12 299/19 300/5 301/10 301/25 306/3 306/5 Wayne [12] 172/7 172/9 245/25 246/3 246/6 246/9 246/14 246/18 246/20 246/23 247/6 247/13 ways [1] 109/15</p>
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W	Case 4:23-cv-00088-CDL Document 363 Filed 03/21/25 Page 360 of 362	
<p>we [466]</p> <p>we'd [2] 34/24 135/18</p> <p>We'll [1] 45/21</p> <p>we're [28] 5/5 14/11 15/10 19/16 22/13 22/24 23/10 53/18 54/9 55/2 83/24 90/3 123/3 129/21 130/21 134/10 162/23 163/5 209/18 287/7 287/14 288/21 288/22 295/4 299/3 300/19 309/23 310/16</p> <p>we've [24] 10/5 10/6 12/5 15/19 68/20 74/13 78/3 95/9 108/9 114/12 125/9 126/15 139/24 155/4 163/21 164/16 176/23 206/17 213/25 224/22 269/14 286/23 294/17 295/3</p> <p>weak [2] 98/6 215/21</p> <p>wear [4] 133/12 235/11 285/25 299/19</p> <p>wearing [24] 134/15 136/4 138/5 150/10 150/12 150/18 151/4 151/15 152/8 234/24 235/3 235/7 235/8 243/17 284/19 284/22 285/7 294/15 295/17 297/5 297/17 298/2 298/10 298/18</p> <p>wears [1] 154/16</p> <p>webbing [21] 132/12 132/14 133/10 133/12 133/14 133/16 133/19 133/24 134/1 134/4 134/12 141/1 141/2 142/11 142/14 142/18 142/21 142/22 143/18 145/23 146/2</p> <p>wedge [7] 197/12 197/19 197/20 197/21 197/21 197/22 210/7</p> <p>wedges [1] 210/1</p> <p>Wednesday [5] 4/1 105/23 163/4 164/1 255/10</p> <p>week [9] 23/6 24/8 116/24 117/1 176/24 217/23 251/25 259/25 293/11</p> <p>weeks [2] 259/12 284/4</p> <p>weighed [1] 70/5</p> <p>weighs [1] 272/3</p> <p>weight [57] 16/15 16/21 18/22 18/25 19/11 22/23 23/20 56/7 56/12 56/18 56/23 57/9 58/6 58/11 58/17 59/12 60/1 60/5 62/1 63/16 64/6 64/6 67/7 67/19 70/10 70/23 71/12 71/13 74/14 74/16 74/19 75/1 75/7 75/8 75/14 75/14 75/17 75/22 76/22 77/11 77/12 77/13 77/14 77/17 78/2 78/5 78/7 78/8 86/24 87/3 87/11 87/16 97/16 97/17 100/25 101/1 196/8</p> <p>weights [2] 58/24 86/19</p> <p>welcome [3] 11/17 165/22 303/14</p> <p>welded [1] 17/15</p> <p>well [43] 6/22 9/4 17/10 32/21 35/8 38/14 39/19 43/14 47/6 55/1 57/23 58/23 61/5 65/7 67/6 68/6 74/12 76/13 91/8 93/11 103/21 104/13 107/4 117/19 129/23 141/10 159/20 171/18 214/18 232/15 233/24 237/8 242/19 260/6 291/20 292/24 297/3 298/24 299/6 299/24 300/21 302/6 303/19</p> <p>well-adjusted [1] 291/20</p> <p>went [35] 52/3 55/14 61/9 71/16 88/23 111/24 156/18 157/4 157/6 172/8 172/9 172/11 172/13 172/22 174/22 175/19 176/10 186/12 189/4 190/18 198/19 214/1 216/12 218/8 228/13 229/4 239/5 240/17 240/19 245/15 247/14 252/4 259/7 264/12 297/9</p> <p>were [155] 6/23 7/12 10/25 15/19 18/4 18/6 18/8 18/9 21/3 22/4 22/12 25/9</p>	<p>25/10 25/14 25/20 25/21 26/5 27/22 34/8 36/10 36/14 39/12 41/15 43/16 47/19 47/21 53/6 55/1 61/3 61/4 61/10 65/1 69/25 73/22 73/22 76/15 76/16 76/16 76/20 80/18 83/10 84/21 86/24 90/15 90/20 95/13 95/14 96/19 97/3 99/24 101/17 103/9 104/6 104/12 105/7 106/4 106/11 106/12 106/19 106/20 106/24 106/25 107/2 108/1 108/5 113/25 117/1 119/19 122/16 132/15 132/18 132/20 148/16 150/13 151/8 155/22 156/17 156/17 160/4 162/4 164/20 173/22 173/24 176/20 176/25 177/17 177/21 178/5 184/8 189/13 189/16 192/7 197/25 200/17 200/18 201/10 202/13 204/11 204/22 205/2 207/23 208/5 208/12 213/17 214/23 216/12 217/3 221/20 224/15 224/16 224/16 225/4 229/13 229/14 229/14 229/15 229/16 229/22 229/22 231/6 233/25 244/9 244/10 245/6 245/18 247/21 261/3 264/11 264/13 267/25 269/21 272/15 273/9 275/12 276/21 277/19 279/7 280/7 280/17 281/1 281/24 282/2 285/22 294/11 294/14 298/23 299/19 301/16 302/25 305/18 306/24 307/16 307/20 308/8 310/22</p> <p>weren't [10] 24/7 156/5 188/23 234/1 243/9 272/13 275/22 277/21 294/18 304/2</p> <p>Westlaw [1] 301/18</p> <p>Westlaw-ed [1] 301/18</p> <p>what [422]</p> <p>what's [22] 29/18 33/15 63/5 67/20 74/23 87/5 87/11 87/16 91/13 94/25 100/16 108/12 130/22 131/14 139/6 152/12 163/12 221/12 224/8 227/4 259/22 287/10</p> <p>whatever [14] 26/25 30/14 32/8 70/20 71/15 148/14 151/18 190/3 215/7 223/21 230/24 293/8 297/9 304/15</p> <p>wheel [15] 16/22 17/17 19/5 122/2 130/8 140/15 144/24 145/4 194/9 205/11 205/16 205/18 205/19 205/20 205/23</p> <p>wheels [8] 15/10 15/11 16/20 18/18 92/12 148/20 148/24 190/22</p> <p>when [199] 5/19 7/20 15/2 15/24 16/4 16/18 18/20 18/22 18/23 18/25 19/6 19/7 19/10 21/24 21/25 24/11 24/14 24/20 24/25 25/23 26/1 28/13 31/11 35/3 35/3 36/23 37/15 38/2 42/2 42/6 44/5 45/5 46/13 54/23 56/20 59/6 59/18 64/5 66/10 71/1 71/15 82/12 83/2 85/7 86/10 86/16 91/1 91/1 91/19 92/7 92/11 92/13 94/14 96/15 96/16 97/19 98/19 104/1 112/9 112/12 113/16 113/18 114/12 114/13 115/4 115/14 118/1 118/7 121/10 122/8 122/9 122/22 125/2 127/16 130/18 132/1 132/7 135/4 145/14 149/6 154/10 163/11 166/7 166/11 174/11 175/6 176/7 181/4 183/24 184/6 188/15 188/24 188/25 190/22 191/5 192/3 192/17 192/25 193/24 194/18 195/1 195/22 196/7 196/21 197/10 197/16 197/23 197/25 198/1 198/3 198/7 199/4 200/6 200/8 201/6 202/23 203/7 205/11 205/14 206/22 207/3</p>	<p>207/6 207/24 208/6 208/22 209/2 210/11 213/15 214/2 214/5 215/4 215/14 216/13 216/18 218/4 221/5 221/24 222/6 223/1 223/9 223/11 223/18 225/8 225/10 225/17 225/18 226/14 226/17 227/17 228/4 228/10 228/13 228/21 232/21 234/9 234/10 235/17 235/22 237/8 237/18 238/11 238/14 238/16 239/4 239/13 239/14 239/15 240/11 241/4 241/19 245/6 247/12 250/3 251/19 251/22 253/18 253/19 258/12 259/7 260/7 266/14 267/13 267/21 271/13 272/13 272/15 273/2 276/12 276/24 278/4 279/15 282/1 283/6 284/4 285/11 287/8 301/17 304/7 310/21</p> <p>where [125] 4/17 12/3 17/11 18/15 19/13 19/14 19/20 19/21 20/7 20/18 21/1 21/11 23/6 25/25 27/14 28/10 29/23 31/3 31/6 31/10 31/10 31/10 32/21 34/25 35/11 35/12 35/13 35/25 38/12 38/17 47/8 48/3 49/23 51/8 59/14 59/19 60/4 60/8 60/16 61/20 62/20 64/16 65/11 66/16 67/10 67/24 71/17 80/24 81/4 82/5 88/4 94/7 94/8 94/13 109/19 110/7 111/1 111/4 111/13 111/19 116/24 117/7 119/23 121/24 124/1 124/5 125/12 128/19 133/23 133/24 133/25 138/18 140/22 141/1 145/16 147/13 148/19 153/14 154/12 154/17 154/17 154/24 155/4 155/8 156/3 161/12 166/1 166/8 169/2 174/12 178/10 178/16 189/2 190/4 190/9 193/15 199/11 199/15 205/3 207/24 208/19 210/1 219/17 225/18 225/19 225/20 225/22 226/3 230/7 230/10 231/16 231/22 244/10 245/13 253/22 258/9 261/14 261/23 262/18 288/3 294/4 296/8 301/12 301/20 302/25</p> <p>Whereupon [3] 110/20 168/21 284/14</p> <p>wherever [3] 20/18 60/1 179/11</p> <p>whether [55] 7/9 7/22 29/5 38/14 55/17 68/4 72/14 77/16 79/21 79/23 91/14 91/14 96/10 98/2 98/10 98/12 121/17 138/7 146/11 149/25 150/10 150/14 151/4 152/13 152/25 154/19 156/6 208/13 212/9 212/23 217/9 222/21 224/6 224/13 229/11 230/2 238/5 242/10 250/16 263/16 270/5 279/24 280/18 280/19 296/23 298/5 304/2 304/4 304/6 304/18 304/22 309/4 309/5 310/22 311/1</p> <p>which [98] 6/2 6/13 6/16 17/10 19/21 27/22 37/1 37/10 47/1 49/25 55/12 75/18 76/18 77/23 78/5 78/7 83/9 84/1 88/2 94/4 95/5 95/13 105/6 105/8 106/9 106/9 108/14 108/18 111/2 112/7 112/19 113/1 118/15 124/8 124/23 129/18 130/23 133/2 140/6 140/6 141/22 144/25 145/18 146/20 152/5 159/8 162/16 173/10 174/2 177/7 177/8 177/13 179/4 183/15 185/2 190/10 190/24 191/1 191/20 196/4 196/9 200/13 200/21 206/1 206/16 207/1 212/24 213/16 213/23 220/17 220/17 222/8 225/7 225/7 228/14 233/14 235/23 237/19 240/17 249/16 249/17 250/6 250/10 254/23 255/22 256/2 256/2 258/15 258/21</p>



W	Document 383 Filed 03/21/25 Page 361 of 362	178/10 180/3 180/18 194/6 235/17 240/5 240/6 245/16 288/20
<p>which... [9] 262/5 269/17 270/20 278/7 291/18 291/25 293/13 299/18 303/21</p> <p>while [26] 7/15 15/14 15/17 18/4 22/22 25/12 25/20 35/6 85/17 87/2 102/14 113/25 144/14 156/17 161/24 173/22 174/20 177/14 180/18 183/8 219/1 236/2 245/18 264/11 288/20 301/16</p> <p>whips [1] 227/18</p> <p>white [2] 210/16 223/8</p> <p>who [74] 14/18 14/23 17/23 18/3 23/5 23/25 26/12 39/8 40/10 40/23 42/15 48/25 52/14 57/17 58/17 61/14 69/16 80/16 99/6 106/16 108/21 115/9 121/15 122/19 137/6 137/9 138/12 138/16 150/21 153/20 162/4 162/6 166/18 177/20 179/24 180/14 181/8 184/10 185/11 197/8 203/4 227/5 232/8 234/15 235/19 236/7 236/8 238/10 244/4 246/24 247/3 247/4 247/13 247/18 248/4 251/3 265/17 273/13 277/5 277/9 277/15 277/16 277/16 278/6 279/21 281/2 281/5 283/20 284/21 285/24 289/19 291/21 302/1 306/8</p> <p>whole [15] 66/5 110/12 113/14 116/7 118/4 118/6 118/7 125/13 132/13 139/4 145/4 168/10 225/23 227/13 290/18</p> <p>whom [2] 26/12 56/8</p> <p>Whose [1] 93/3</p> <p>why [50] 5/5 6/3 9/6 20/25 28/13 58/20 68/7 71/16 80/18 84/18 113/2 119/21 120/15 131/9 136/25 140/20 141/7 143/1 143/13 145/11 146/7 147/2 157/19 166/5 173/16 175/25 186/15 194/5 203/16 209/8 210/14 213/14 214/1 214/25 220/11 228/9 235/12 243/24 243/25 253/16 281/25 282/3 282/5 288/4 288/5 300/6 300/8 303/25 304/3 306/18</p> <p>wide [3] 58/24 58/25 83/1</p> <p>width [1] 31/19</p> <p>wife [4] 229/7 230/6 275/14 275/15</p> <p>will [128] 9/25 10/3 10/7 10/8 10/14 11/3 11/7 11/15 11/18 25/11 28/10 31/7 32/7 44/21 56/3 57/17 67/7 71/8 72/14 74/12 76/8 79/5 80/15 91/10 92/19 93/16 98/2 102/23 105/20 106/17 106/21 109/10 118/10 118/11 118/25 121/4 122/11 122/22 123/14 124/13 124/14 124/17 135/22 136/12 138/16 138/17 141/23 146/1 146/4 147/7 148/20 148/21 149/2 149/4 150/21 151/18 153/4 158/23 159/21 164/10 165/1 166/12 166/13 167/9 167/11 167/12 167/13 167/20 167/21 173/13 179/9 179/10 179/12 179/14 179/15 181/5 181/21 181/25 184/10 185/18 186/13 186/15 188/16 190/12 212/10 214/8 219/16 223/7 227/4 238/4 247/5 255/6 255/8 264/10 269/2 269/14 273/4 276/20 280/13 283/21 284/6 286/24 286/25 287/18 288/1 288/2 288/2 288/3 288/5 288/13 288/14 289/1 289/3 289/14 290/10 291/7 293/16 299/15 300/9 300/13 302/14 303/15 308/24 310/2 310/5 310/10 310/12 311/8</p> <p>willing [1] 310/1</p>	<p>window [19] 17/11 17/17 18/7 19/22 20/4 41/17 41/24 102/2 102/5 140/19 199/6 215/25 252/18 252/21 253/20 253/21 272/9 272/23 273/1</p> <p>windows [2] 41/20 54/21</p> <p>window sill [6] 19/21 19/25 20/2 20/7 20/18 20/22</p> <p>windshield [15] 16/12 22/13 27/24 30/1 35/12 48/11 90/17 91/13 91/16 92/3 94/25 215/19 215/20 260/17 260/18</p> <p>wire [1] 94/6</p> <p>wish [1] 167/20</p> <p>wispy [1] 210/16</p> <p>withdraw [1] 306/1</p> <p>within [29] 38/15 39/19 50/12 108/1 113/12 122/14 128/10 140/24 140/25 143/6 143/22 146/1 148/6 150/17 151/24 155/17 161/11 161/17 161/20 162/6 174/5 195/21 260/5 260/24 261/1 261/2 261/9 282/6 289/4</p> <p>without [12] 5/3 8/17 50/4 50/10 73/12 77/22 89/20 155/19 168/1 259/11 295/3 302/11</p> <p>withstand [1] 143/16</p> <p>witness [42] 6/1 6/5 6/7 7/8 23/25 24/18 55/4 72/22 108/21 110/5 110/20 129/22 136/24 157/25 165/23 168/2 168/21 232/6 237/17 239/7 246/16 247/2 254/19 256/19 259/21 259/24 262/1 266/1 270/6 270/7 280/24 283/20 283/25 284/3 284/14 286/6 291/18 292/6 292/11 302/8 303/13 303/20</p> <p>witnessed [1] 129/22</p> <p>witnesses [15] 7/21 23/23 25/17 26/5 109/13 119/6 138/12 151/11 167/7 188/9 239/6 246/24 254/10 285/19 292/10</p> <p>witnesses' [1] 25/19</p> <p>woman [4] 219/20 240/1 253/21 272/8</p> <p>won't [5] 78/23 146/2 148/20 148/22 279/12</p> <p>word [8] 31/18 79/18 149/21 159/21 167/10 269/3 276/20 297/10</p> <p>words [6] 53/10 71/24 82/12 156/14 166/15 167/22</p> <p>wore [8] 293/13 293/21 293/24 294/7 295/10 297/14 297/24 299/12</p> <p>work [82] 8/7 13/11 23/21 36/17 37/3 42/8 42/11 47/16 79/15 86/18 92/21 93/3 98/21 104/2 111/4 111/5 111/13 111/15 112/12 112/16 113/6 113/7 115/4 115/16 115/17 117/22 117/24 121/12 121/13 121/14 121/21 121/24 122/2 122/15 123/19 149/8 153/23 153/25 153/25 158/10 169/5 172/25 176/19 177/11 177/13 178/12 178/17 179/25 184/22 186/2 187/11 187/12 187/20 188/11 188/12 201/13 201/16 201/18 201/21 201/23 201/25 202/5 202/17 202/24 214/18 230/10 236/1 237/8 237/15 237/16 244/20 244/24 245/16 247/23 248/4 248/5 248/6 248/7 248/8 248/8 249/23 249/24</p> <p>worked [12] 48/25 69/21 111/14 111/16 158/15 162/12 172/10 172/11 184/21 244/17 244/22 245/1</p> <p>workforce [1] 285/14</p> <p>working [18] 36/11 48/25 70/8 82/24 83/5 138/15 158/13 159/17 160/4</p>	<p>works [3] 33/18 48/24 245/3</p> <p>workup [1] 239/16</p> <p>world [6] 112/24 125/24 246/7 266/9 285/21 295/8</p> <p>worn [11] 134/1 135/4 135/13 152/25 154/8 154/10 154/24 155/11 293/22 294/1 297/20</p> <p>worry [1] 4/13</p> <p>worse [1] 294/14</p> <p>worst [1] 155/4</p> <p>worthy [1] 185/18</p> <p>would [245] 4/14 6/3 12/14 12/22 13/17 18/19 19/5 19/17 22/22 22/23 23/6 23/16 23/19 25/8 26/15 29/19 29/19 32/20 32/21 32/23 33/19 34/23 35/6 35/22 35/23 36/3 36/5 37/21 38/12 38/24 39/12 41/17 41/17 42/7 43/12 43/15 44/10 46/10 46/14 49/16 50/4 50/10 50/25 51/8 52/6 54/20 55/17 56/5 56/14 57/21 57/21 59/1 59/2 63/20 65/3 65/10 66/7 68/13 69/2 69/4 69/12 70/22 74/18 74/24 75/22 76/12 76/14 76/18 79/10 80/11 89/5 89/6 89/6 90/23 90/24 94/7 95/14 96/10 96/13 98/14 99/6 100/24 101/3 101/4 101/5 101/13 102/9 104/16 104/23 104/23 107/5 107/20 109/3 109/4 109/7 109/7 110/1 115/20 115/24 120/19 121/8 121/20 123/11 124/10 128/20 128/22 129/19 130/24 131/23 132/1 132/18 132/25 137/15 143/1 143/13 144/7 144/8 145/14 146/7 147/2 148/12 154/5 154/9 158/11 160/10 170/14 171/3 171/8 173/1 174/4 174/5 175/6 175/7 177/10 177/13 178/3 182/22 184/11 184/12 185/7 186/22 189/24 191/20 193/7 194/13 195/10 195/24 200/13 200/21 200/25 201/4 201/5 201/8 201/10 202/13 202/15 203/4 205/18 205/19 206/2 206/25 208/18 208/19 211/19 213/11 213/13 214/19 215/3 216/2 217/8 219/7 219/12 219/20 219/24 222/12 223/11 223/13 225/24 226/4 226/5 226/6 226/19 227/16 230/11 230/15 230/21 233/8 233/17 233/20 238/6 239/2 241/18 242/23 243/2 245/21 251/13 252/8 254/3 254/12 256/5 260/10 260/18 260/22 262/3 262/14 263/3 263/9 265/23 266/10 267/7 269/23 270/25 274/17 275/16 276/12 279/19 279/20 280/22 282/4 283/2 284/24 285/2 287/5 289/6 290/8 290/15 292/15 292/17 292/19 292/22 293/7 293/11 293/23 294/1 294/3 294/4 294/14 295/1 295/4 295/20 297/19 300/8 304/1 305/10 307/5</p> <p>would've [1] 108/4</p> <p>wouldn't [20] 13/15 35/25 43/5 43/22 43/25 44/2 44/7 44/13 52/7 55/20 56/5 59/24 63/12 104/25 185/3 219/23 237/5 238/9 244/2 304/3</p> <p>wounds [1] 180/5</p> <p>wrap [1] 137/21</p> <p>wreck [7] 5/2 271/18 293/10 296/1 296/4 296/16 296/25</p> <p>wrecker [1] 188/8</p> <p>WRIGHT [5] 1/25 14/1 268/1 283/20</p>

<p>W</p> <p>WRIGHT... [1] 296/13</p> <p>wrist [1] 107/15</p> <p>write [2] 239/25 264/9</p> <p>writing [2] 52/9 290/15</p> <p>written [9] 211/11 211/14 240/17 280/3 290/7 290/8 290/14 290/16 310/13</p> <p>wrong [9] 6/7 33/18 44/22 71/11 71/23 201/5 254/25 308/21 309/17</p> <p>wrote [10] 61/1 212/23 212/24 213/2 213/5 254/25 257/18 257/23 257/25 280/4</p>	<p>55/23 74/2 74/3 80/12 97/8 97/23 138/10 146/13 151/11 154/25 158/22 183/13 190/23 193/5 193/21 194/6 194/23 195/9 195/11 196/1 196/8 196/12 196/23 200/1 201/16 232/5 234/6 235/14 236/5 239/10 247/8 247/24 248/14 248/17 248/18 248/23 249/3 249/7 249/14 253/21 263/17 266/12 266/18 266/21 276/22 279/15 284/9 285/16 285/16 289/9 289/13 294/19 310/18</p> <p>young [3] 112/15 113/3 173/5</p> <p>your [477]</p> <p>yourself [4] 35/22 176/7 208/7 293/5</p>	
<p>X</p> <p>x-ray [1] 214/10</p> <p>x-rays [6] 178/4 211/4 211/5 211/6 211/6 211/13</p>	<p>Z</p> <p>zeros [1] 62/9</p> <p>zoom [4] 88/4 89/9 203/22 204/2</p> <p>zoomed [1] 134/3</p>	
<p>Y</p> <p>y'all [3] 302/1 305/7 305/19</p> <p>y'all's [1] 305/5</p> <p>yeah [26] 11/1 11/12 20/17 34/11 116/16 158/3 173/24 180/2 200/6 215/8 217/25 220/19 233/24 235/12 238/8 241/12 241/20 243/6 264/1 270/19 272/23 276/20 278/4 286/15 309/3 310/19</p> <p>year [32] 12/11 36/14 36/19 36/25 37/1 37/21 38/3 46/16 46/17 76/11 78/15 84/7 88/3 111/17 157/9 160/7 161/1 176/11 176/15 177/4 177/6 185/3 197/7 234/15 234/21 235/9 272/3 272/4 272/7 272/7 273/13 281/3</p> <p>years [36] 13/18 13/22 37/14 43/3 48/2 105/10 111/7 111/16 113/16 114/16 114/18 118/21 120/15 121/1 125/14 135/8 138/11 143/16 146/18 158/4 161/13 172/12 173/7 173/11 176/14 176/18 176/22 177/14 183/25 217/19 226/12 233/16 244/4 249/21 266/5 279/22</p> <p>yellow [2] 34/2 89/11</p> <p>Yep [1] 249/6</p> <p>yes [337]</p> <p>yesterday [21] 4/16 11/20 12/1 12/4 13/16 18/11 19/5 22/6 54/3 60/25 61/4 61/16 73/2 79/15 80/23 89/19 90/2 91/10 92/17 262/25 307/12</p> <p>yet [8] 11/5 11/11 109/9 188/24 241/5 262/6 277/15 278/17</p> <p>yo [1] 179/19</p> <p>you [1577]</p> <p>you'd [3] 83/10 131/13 288/12</p> <p>you'll [3] 284/8 288/6 288/9</p> <p>you're [70] 13/25 14/2 14/20 16/2 16/11 21/8 21/23 23/16 24/10 24/13 26/20 30/11 34/20 35/8 38/24 39/7 43/16 47/8 52/10 55/24 57/9 57/11 68/6 69/2 75/20 75/20 78/9 83/11 98/17 103/1 103/8 104/13 114/1 124/16 130/7 132/2 153/7 153/18 157/18 162/21 165/24 178/20 195/20 195/24 202/23 202/24 203/12 203/13 209/20 230/18 237/8 241/4 246/15 253/17 264/15 266/6 268/17 278/1 278/1 282/23 284/10 288/12 288/20 291/11 297/16 299/24 304/12 305/24 305/25 306/1</p> <p>you've [63] 12/24 23/2 25/19 33/14 37/13 44/12 49/13 52/20 53/10 53/11</p>		